

EXHIBIT B

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE:
EARTH PRIDE ORGANICS, LLC,
Debtor.
.

. Chapter 11
. Case No. 17-13816-elf
. Courtroom No. 1
. Philadelphia, Pennsylvania
. Friday, December 21, 2018

TRANSCRIPT OF HEARING ON OBJECTION TO AMENDED CHAPTER 11 PLAN
(PRE-CONFIRMATION)
BEFORE THE HONORABLE ERIC L. FRANK
UNITED STATES BANKRUPTCY JUDGE

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.

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1 (Proceedings commence at 9:36 a.m.)

2 (Call to order of the Court)

3 THE COURT: Good morning.

4 COUNSEL: Good morning. Good morning, Your Honor.

5 THE COURT: We're here in the case of Earth Pride
6 Organics. Let me begin by taking counsel's appearances.

7 MR. GEORGE: Good morning, Your Honor. Edmond
8 George and Michael Vagnoni from the Obermeyer firm, on behalf
9 of the committee.

10 MR. MASCHMEYER: Your Honor, Paul Maschmeyer on
11 behalf of the debtor

12 MR. KIZNER: Marshall Kizner from Stark & Stark on
13 behalf of Dalmatia Import Group. Your Honor, these are my
14 clients Harvey Grossman for Dalmatia and Maia Magee from
15 Dalmatia, Your Honor.

16 MS. MAGEE: Hello.

17 THE COURT: Okay. I take it, Mr. Kizner, you would
18 like to pick up the discussion that we had in a conference
19 call yesterday. Is that where you want to begin?

20 MR. KIZNER: Yes, Your Honor. Just regarding the
21 discovery motion, I mean, we served the discovery --

22 THE COURT: What motion?

23 MR. KIZNER: The objection. Sorry.

24 THE COURT: What motion?

25 MR. KIZNER: The objection that was --

1 THE COURT: You just used phrase "discovery
2 motion." What motion?

3 MR. KIZNER: The objection that was filed
4 yesterday, Your Honor.

5 THE COURT: That was an objection that was filed by
6 the other side.

7 MR. KIZNER: Okay. Regarding the objection and the
8 discovery that was discussed --

9 THE COURT: Why is that before me?

10 MR. KIZNER: Why is it before you, Your Honor?

11 THE COURT: Yeah.

12 MR. KIZNER: Because we served discovery, a notice
13 to produce, to prepare for this hearing, and they decided
14 they weren't going to cooperate.

15 THE COURT: And what are you supposed to do if you
16 think that an objection is invalid; what do the rules provide
17 for?

18 MR. KIZNER: The rules provide that they filed an
19 objection and we can file a motion.

20 THE COURT: That's why I asked the question.

21 MR. KIZNER: Yeah.

22 THE COURT: What motion?

23 MR. KIZNER: Well, Your Honor, the discovery was
24 due yesterday, they filed the objection at the eleventh hour.
25 They told us 30 days before --

1 THE COURT: And when did you serve the discovery?

2 MR. KIZNER: We served it 30 days ago, Your Honor -

3 -

4 THE COURT: Uh-huh.

5 MR. KIZNER: -- pursuant to the rule.

6 THE COURT: So you served it so that it was going
7 to land on -- the response date was going to land on the day
8 before the trial date, right?

9 MR. KIZNER: Your Honor, there's -- correct, but
10 there's a truncated process here where we have to go by the
11 Federal Rules for discovery, and the hearing date was --

12 THE COURT: You could have asked for expedited
13 discovery.

14 I also heard something yesterday -- I don't have
15 any record about it -- but that there was a suggestion in the
16 conversation yesterday that you were at least informally
17 advised some time ago that the debtor and the committee were
18 going to object. Is that accurate?

19 MR. KIZNER: They mentioned it, and they never
20 objected until --

21 THE COURT: Until the --

22 MR. KIZNER: -- yesterday.

23 THE COURT: Until the date they had to formally
24 object.

25 MR. KIZNER: Your --

1 THE COURT: How long ago did they mention it?

2 MR. KIZNER: Like 20 days ago, Your Honor.

3 THE COURT: About 20 days ago?

4 MR. KIZNER: Yeah, but there was no objections and
5 there was no discussion, which means they could have just
6 said they were going to comply with the discovery.

7 MR. GEORGE: Your Honor, that --

8 MR. KIZNER: I mean, until they have a formal
9 objection --

10 THE COURT: All right. Well, why don't you
11 continue? I'll let you finish making your point.

12 MR. KIZNER: The point, Your Honor, is that we
13 served the discovery. You know, they basically just did a
14 blanket objection. We believe that this information is
15 pertinent. I don't understand why they just took the
16 position they're not going to produce anything, other than
17 they just don't want to, which is not a basis, in my opinion,
18 Your Honor, to not provide any discovery in advance of a
19 contested hearing, where the Federal Rules apply.

20 They could have filed the objection earlier. They
21 could have filed a motion for a protective order, they didn't
22 do that. Instead, they just waited until the eleventh hour
23 and filed a blanket objection. And you know, they're just
24 trying to support this concept of trial by ambush, which is
25 not what the rules are meant to be, Your Honor.

1 THE COURT: Can you -- just to fill out the record
2 a little bit, given that -- you filed your objection to
3 confirmation in July. The plan was confirmed in September,
4 and the confirmation order set up this process -- I guess I'm
5 going to call it the "virtual objection" to confirmation,
6 since we have a confirmed plan. That occurred in September.
7 Pursuant to the confirmation order, you followed up and filed
8 the requisite precipice to schedule the hearing on your
9 objection in October, and then you wait until November to
10 file your discovery, where the due date for the discovery is
11 the day before trial. Does that look like --

12 MR. KIZNER: I can --

13 THE COURT: -- you're --

14 MR. KIZNER: Your Honor, I -- I'm not going to --
15 your characterization is one perspective. The other
16 perspective --

19 MR. KIZNER: There's not -- there's facts that are
20 not -- that are not in the record that you didn't just
21 mention, the fact that we --

22 | THE COURT: The facts on --

23 MR. KIZNER: -- we filed --

1 MR. KIZNER: They're on the court docket, but they
2 weren't just provided for the Court, Your Honor, in terms of
3 the fact that we tried to file a limited withdrawal of the
4 reference and we sought a stay and we promptly filed the
5 discovery after the stay was reject -- was denied and we
6 filed within a few days of the -- of Your Honor entering that
7 order. So I mean, it's a truncated process, and we're
8 dealing with rules and --

9 THE COURT: There's also a process to get expedited
10 discovery, is there not?

11 All right. If you're making an oral motion under
12 Rule 37, if that's what this is, that motion is denied, for
13 lack of diligence. You can't wait until the day of trial and
14 say, I didn't get my discovery. It just doesn't work that
15 way.

16 MR. KIZNER: Your Honor, if that's your decision,
17 we've made --

18 THE COURT: Yeah, that's --

19 MR. KIZNER: -- our oral motion --

20 THE COURT: -- my decision.

21 MR. KIZNER: -- you've denied it --

22 THE COURT: So I'm ready to proceed.

23 MR. KIZNER: -- the record reflects the same.

24 Okay. Proceed.

25 THE COURT: Now I gave a little thought to the

1 process here. And again, things get complicated because of
2 the fact that this is not a conventional confirmation
3 hearing. Typically, at the confirmation hearing I would
4 expect the debtor to present evidence first.

5 But I think in this particular case what's most
6 appropriate is that, since we have a confirmed plan and we
7 have this objection to confirmation by one party simply about
8 its treatment and a prior agreement among the parties that I
9 should consider that as if we were at confirmation, but that
10 the consequence of a successful objection is not denial of
11 confirmation, but rather simply a modification of plan
12 treatment for the creditor.

13 Given that that's the posture that we're in, I
14 think the appropriate way to go here is to have the objector
15 go first. The objector should have the burden of production.
16 The burden of proof is going or remain with the debtor as to
17 whether or not plan provisions that -- and the treatment of
18 this creditor that the creditor finds objectionable pass
19 muster under the Bankruptcy Code. So that's how I see it.
20 Anybody want to suggest a different approach?

21 MR. KIZNER: Your Honor, I have no objection to the
22 debtor proceeding. I do have one oral -- one --

23 THE COURT: No, no. What I'm saying is that you
24 would proceed first.

25 MS. MAGEE: We would go first.

1 MR. KIZNER: Yeah, I'm sorry. We would go first.

2 I do have one more oral motion I'd like to make.

3 THE COURT: Okay.

4 MR. KIZNER: I'd like to move to disqualify
5 unsecured creditors' committee's counsel from this case.
6 Your Honor, they have a fiduciary duty to my client. My
7 client is the largest unsecured creditor in the case and
8 they're actively -- they should be sitting at this table with
9 us, and they've been actively working against our interests
10 for months and months. And there's, in my opinion, a clear
11 breach of fiduciary duty here. And I -- and the fact that
12 we're being ganged up against the debtor with someone that's
13 supposed to represent us is a conflict of interest and it
14 shouldn't happen.

15 THE COURT: All right. That motion is denied.

16 MR. KIZNER: Okay.

17 THE COURT: So I think where we should go next is
18 I'm prepared to listen to opening statements before we get to
19 the evidence. So, Mr. Kizner, if you'd like to make an
20 opening statement, you're free to do so.

21 MR. KIZNER: Sure.

22 Your Honor, this issue, it really deals with the
23 Bankruptcy Court and about general fairness. This Bankruptcy
24 Court is a Court of Equity and it's supposed to treat
25 creditors and debtors fairly. And what you have here is you

1 have -- and the evidence is going to show at this evidentiary
2 hearing, is an effort that occurred at some point between
3 April of 2018 and June of 2018, where the unsecured
4 creditors' committee decided they wanted to take advantage of
5 an ambiguity or an incompleteness in a settlement agreement
6 and treat the largest unsecured creditor in this case
7 unfairly.

8 There was a settlement -- a handwritten settlement
9 -- the evidence is going to show there was a handwritten
10 settlement on October 11th, 2017, in the District Court. The
11 settlement basically -- there was some language squeezed in
12 on a line that dealt with payment of ten percent. It said
13 "at least ten percent," it created a floor. There was no
14 discussion about separate classes and treating unsecured
15 creditors one -- every other unsecured creditor in a more
16 favorable light than the debtor.

17 It's just absent. This wasn't discussed before
18 Judge Smith in the Eastern District, this issue just didn't
19 come up. I don't think anyone was thinking about it, and
20 that's why it wasn't in the agreement.

21 This is consistent with the actions that occurred
22 before this Court afterwards. On November 20th, 2017, the
23 first disclosure statement and plan were filed. My client
24 was treated as every -- as -- fairly, with every other
25 unsecured creditor, receiving 15 percent. If that was -- if

1 the understanding was it would be 10 percent, why didn't the
2 first plan have that in the first disclosure statement?

3 Consistent with our belief, on March 12th, 2018,
4 the second -- the first amended plan was filed, Your Honor;
5 same thing, 15 percent. Then the second amended plan was
6 filed on April 27th, 2018, again, the same treatment.

7 On June 1st, 2018 -- so something happened between
8 April 27th and June 1st, and what happened was the unsecured
9 creditors' committee decided to become adverse to Dalmatia.
10 And they had this idea that, oh, we can try to basically make
11 an issue out of this language, make an issue out of the
12 course of performance and conduct in this case and what
13 happened at the settlement agreement and turn this into an
14 issue. That was the point where every other creditor was to
15 receive something between 39 to 50 percent, and Dalmatia is
16 brought down to 10 percent. It's completely inconsistent
17 with the first three plan iterations.

18 The fourth amended plan was filed, which is the one
19 that was ultimately confirmed. Again, that same treatment is
20 there, and we objected to it. I mean, this is just a bad
21 faith -- this whole thing is just bad faith, Your Honor.

22 And as you might recall at the confirmation
23 hearing, Mr. Thompson made a proffer before this Court that
24 he can pay Dalmatia, he -- and that's part of the
25 confirmation order, depending on what happens here today. So

1 he has the money to pay, he just doesn't want to pay. And
2 this is really just trickery, Your Honor.

3 My client should be treated fairly, like every
4 other unsecured creditor. She's gone through some tough
5 times with this creditor, which culminated in this bankruptcy
6 -- this debtor, rather -- which culminated in this bankruptcy
7 being filed. She was treated unfairly before, the test --
8 that's what the testimony is going to show. She's been
9 treated unfairly now, after.

10 This is a Court of Equity. The Court should do the
11 fair thing. Every unsecured creditor should be treated the
12 same, and that's what we hope Your Honor decides.

13 THE COURT: Can you just tell me a little bit about
14 what evidence you're going to put on?

15 MR. KIZNER: Your Honor, Ms. Maia Magee, she is the
16 co-founder of Dalmatia, she's going to be our witness. We're
17 also going to refer to various pleadings of record, in terms
18 of the -- basically, the settlement agreement.

19 I mean, Your Honor, in our -- our impression of
20 this is that this issue was just never discussed by anyone,
21 so, you know, there was a lack of information. And she's
22 going to testify as to what happened that day. It was a
23 twelve-hour day before Judge Smith in the Eastern District,
24 it culminated with this handwritten agreement around 11 or 12
25 p.m. I mean, that's really what we're dealing with here.

1 So that's going to be our -- I mean, in terms of
2 the documents, well, the documents are what's already of
3 record, Your Honor, which is namely the settlement agreement,
4 which was filed by the Court, which received court approval.

5 THE COURT: Okay. Thank you.

6 Would any of the respondents like to -- I'm calling
7 you "respondents" because it's an objection -- but the
8 committee and the debtor, would someone like to make an
9 opening statement?

10 MR. GEORGE: Your Honor, I think that counsel made
11 a couple of perhaps admissions that I think might be
12 important for Your Honor when you decide how much and what
13 kind of interpretation --

14 THE COURT: Actually --

15 MR. GEORGE: -- you have to do.

16 THE COURT: -- I'm not sure I want to hear like a
17 closing argument type argument.

18 MR. GEORGE: No, but -- understood, Your Honor, but
19 I think the --

20 THE COURT: All right. Go ahead.

21 MR. GEORGE: -- point that I'm trying to make to
22 Your Honor is, is that there's been a concession that there
23 was -- none of these issues were really discussed, the
24 classification, the separate treatment. And so, in our view,
25 he's not suggesting that something should have been in this

1 agreement that wasn't in this agreement.

2 And so I think we had this discussion yesterday
3 about parol and how it could be used and whether there was
4 anything ambiguous about this. I think that's a concession,
5 that it's not ambiguous, that the parties never contemplated
6 these things and didn't talk about them.

7 With respect to where the committee is in this
8 case, Your Honor, the three versions of the plan, I don't
9 think Your Honor would not remember that the committee was
10 never in favor of ten cents; that we consistently came to the
11 Court and told the Court that we felt that creditors could be
12 paid substantially in full. So a single creditor decided to
13 accept a dime, without waiting to see what the committee was
14 going to do.

15 That was one of the debtor's complaints, was that
16 the deal that it made with the unsecured creditor didn't come
17 until months after Dalmatia. Well, that was a choice that
18 Dalmatia made, to make a decision to accept a dime. They
19 could have waited and said -- and to see what the unsecured
20 creditor were going to get.

21 But more importantly, Judge, one of the things that
22 I think is important here is that there was a mechanism by
23 which, for the payment of some sum -- which was undisclosed
24 to the Court and blacked out, redacted from the agreement --
25 that Mr. Thompson would be potentially the owner of the

1 claim. And so our concern from the committee's standpoint
2 was that the debtor and Dalmatia were, in fact, conspiring to
3 try to gerrymander to diminish the significance of the
4 unsecured creditors' votes by negotiating for the treatment
5 and acceptance of a plan, for which a disclosure statement
6 had not yet been approved.

7 THE COURT: I'm not sure I follow.

8 MR. GEORGE: Well, you can't solicit votes and you

9 --

10 THE COURT: No, no. I understand that piece of it.
11 Show me --

12 MR. GEORGE: Because --

13 THE COURT: Describe for me why it was some kind of
14 end run around the committee's --

15 MR. GEORGE: Because --

16 THE COURT: -- negotiating position.

17 MR. GEORGE: Because they had negotiated for an
18 acceptance of the plan if they got a dime, and it was far
19 less than what we were negotiating for. So our concern was -

20 -

21 THE COURT: But how does --

22 MR. GEORGE: -- that the debtor --

23 THE COURT: How does the --

24 MR. GEORGE: -- and Dalmatia --

25 THE COURT: But how does the transfer of the claim

1 to the debtor's principal fit into that theory?

2 MR. GEORGE: Well, because it could have been held
3 by an insider.

4 THE COURT: But then I wouldn't count the vote,
5 would I?

6 MR. GEORGE: Well, no, but then it would be
7 entitled to a distribution. And then that raises issues
8 about whether it be subordinated or not. And if you
9 remember, part of our settlement was the permission to allow
10 certain claims that were EPOs to be paid by LFF, and it's
11 basically a de facto consolidation of the two estates to
12 allow these monies to be paid out.

13 And so if you took all the unsecured creditors and
14 you put them in a pot -- and Dalmatia had an agreement that
15 they would vote in advance of us having negotiated our deal -
16 - then the debtor and Dalmatia would have been gerrymandering
17 for the debtor to control that class, to keep the committee
18 from getting anything else out of them. And we think that
19 would have been a bad faith plan.

20 THE COURT: Although that, ultimately, didn't
21 happen, right?

22 MR. GEORGE: No, it didn't. But we're negotiating
23 a plan, Judge, so we have to plan for the eventuality that
24 someone is making an end run of the committee, which is what
25 I think was happening here.

1 Now it ultimately happened that we negotiated --

2 THE COURT: Well, let -- this is an interesting
3 point, so let's just stay on it for a second. We'll come
4 back to the main case.

5 Just in the abstract, if you have a Chapter 11 case
6 with a committee, and there is a -- one very large unsecured
7 creditor that can potentially control the vote or come close
8 to controlling the vote, and in its own business judgment
9 it's satisfied if it gets X, which might be a relatively low
10 percentage from the committee's point of view, but is there,
11 per se, anything wrong with that, with the -- that creditor
12 having a discussion directly with the debtor --

13 MR. GEORGE: No --

14 THE COURT: -- about that?

15 MR. GEORGE: -- I don't think. But when that
16 unsecured creditor is potentially a controlling creditor --
17 and we'll get to that in closing argument --

18 THE COURT: Is what makes this create some smoke
19 for you the fact that, at the time this was occurring, it had
20 that extra provision about the transfer of the claim to the
21 insider?

22 MR. GEORGE: Correct.

23 THE COURT: That's what raised concerns.

24 MR. GEORGE: Absolutely.

25 THE COURT: But absent that, would you have had

1 concerns, absent the provision regarding the transfer to the
2 principal.

3 MR. GEORGE: Well, yes, Judge, because of the
4 nature --

5 THE COURT: Well, that's what I'm trying to
6 understand why.

7 MR. GEORGE: Because of the nature of what
8 Dalmatia's claims were. They were contested, they were
9 litigation claims. The result of this was an injunction, and
10 that injunction curtailed the debtor's ability to generate
11 revenue. And so --

12 THE COURT: Well, I get that from the -- well, I
13 guess those issues would unfold then in the 9019 process.
14 But if nothing came up that was untoward in the 9019 process,
15 it would just be a reality, I guess, in a case where, if you
16 have a large enough individual unsecured creditor, some sort
17 of a structural thing that that creditor, to some extent, has
18 the ability to undercut the committee because it has a big
19 vote --

20 MR. GEORGE: Well, Judge --

21 THE COURT: -- and it's --

22 MR. GEORGE: -- all things being equal, if Dalmatia
23 were a vendor creditor like the majority of the other
24 creditors in the case, then I would say that's -- that could
25 be true. But in our view, what Dalmatia had going into this

1 case is far different than what the vendors and taxing
2 authorities had coming into this case.

3 THE COURT: But they were doing very well in that
4 litigation, weren't they?

5 MR. GEORGE: Well, I think they were, and that's
6 maybe why they shouldn't have accepted a dime, but they did
7 it.

8 And as far as my fiduciary duty, it's owed to
9 everybody. They have their own lawyers, they're in,
10 negotiating. I mean, I'm sorry I got everybody 60 cents. If
11 that's the worse thing I've done in this case, then I'll
12 accept that criticism. But the fact of the matter is nobody
13 involved us in the negotiations. This provision of them
14 voting if they got a dime wasn't anything the committee was
15 consulted with -- for or with.

16 And so we viewed that as an effort of the debtor
17 and Dalmatia to come up with a way that, if Mr. Thompson
18 couldn't get a deal with us, that they could confirm the plan
19 over our objection. So we viewed it as the opposite
20 gerrymandering or the potential of gerrymandering on the
21 other side.

22 THE COURT: Right.

23 MR. GEORGE: So then, when we talk about
24 gerrymandering, Judge, you know, before we get into the John
25 Hancock issues -- and I will talk to you more about that on

1 closing -- you know, we had other classes voting in favor of
2 this plan, and they weren't unsecured creditors. So we could
3 have crammed this plan down on everybody, even in the absence
4 of Dalmatia being in our class. Even if unsecured creditors
5 didn't vote in favor of it --

6 THE COURT: Uh-huh.

7 MR. GEORGE: -- there was a secured creditor that
8 voted in favor of it. So it's not like this was a deficiency
9 claim, and we stuck it in a separate class --

10 THE COURT: Right.

11 MR. GEORGE: -- because we couldn't confirm over
12 the objection. There were other creditors who voted in favor
13 of the plan. And if you look at the report of plan voting,
14 you'll see that secured creditors voted in favor.

15 THE COURT: Although, in the end, I don't think
16 it's -- I mean, sometimes the issues merge. I'm not sure
17 that the real dispute in this case is about classification.
18 I think it is really fair and equitable treatment, is the
19 gist of Dalmatia's --

20 MR. GEORGE: Well, if --

21 THE COURT: -- complaint here.

22 MR. GEORGE: If that's so, I'm happy to hear that,
23 but I thought it was -- I thought they were arguing the other
24 part, too, Judge.

25 THE COURT: Well, it's hard to separate the two --

1 MR. GEORGE: Well, and I guess --

2 THE COURT: -- because by classifying --

3 MR. GEORGE: -- that would be my point.

4 THE COURT: -- Dalmatia separately, the debtor
5 proposed to pay them less, so they're obviously related
6 concepts.

7 MR. GEORGE: But Your Honor, you know, they got
8 five years worth of an injunction, and so you only get an
9 injunction if you can convince a judge that there is some
10 kind of damage that you've suffered that can't be satisfied
11 by the payment of money. And so they may have only gotten a
12 ten-cent deal, but they got plenty of other consideration,
13 the value of which we've not been able to quantify.

14 But if you put dollars on it, or if you were able
15 to put dollars on it -- and everybody who gets an injunction,
16 Judge, I'm convinced an economist could sit down and put
17 dollars on it. But those injunction provisions are
18 significant and they last for years, and so that's a
19 significant economic benefit that they got --

20 THE COURT: Okay.

21 MR. GEORGE: -- which is in excess of the ten
22 cents, and which takes them and puts them in a category of
23 people with claims and legal and equitable rights against the
24 debtor that are different than anybody else.

25 And so those are significant differences, and

1 that's, in our view, one of the most significant
2 justifications for this separate classification, on top of
3 the issue of preventing the debtor and Dalmatia from cramming
4 a plan down on the rest of the unsecured creditors. So those
5 are our issues that we have in the case, Judge.

6 THE COURT: Okay.

7 MR. GEORGE: And so I just wanted to try to give
8 you a primer of --

9 THE COURT: Okay.

10 MR. GEORGE: -- where we're going --

11 THE COURT: I have --

12 MR. GEORGE: -- without making a closing argument.

13 THE COURT: I have a sense of your perspective on
14 it. Can you give me a little idea of what, at least at this
15 point -- it might depend on what you hear -- but what you're
16 intending to present.

17 MR. GEORGE: I would think just cross-examination
18 of Dalmatia's witness, and potentially Mr. Thompson, if --

19 THE COURT: If you decide that later.

20 MR. GEORGE: -- if I feel that -- yes, Judge.

21 THE COURT: Okay. Thank you.

22 Mr. Maschmeyer, do you wish to be heard?

23 MR. MASCHMEYER: Yeah, Judge. I'm not going to
24 repeat a lot of what Mr. George said. But I just want to
25 make it clear, Judge, when we -- the Dalmatia settlement gave

1 -- one of the comments we heard was they weren't being
2 treated fairly, like other unsecured creditors. And the
3 reality is Dalmatia got a lot more than a lot of the other
4 unsecured creditors did under this settlement agreement; Mr.
5 George alluded to that.

6 You know, under this agreement, not only we keep
7 talking about the ten percent, which the agreement says, as
8 long as the plan plays at least ten percent, but they also
9 received a year injunction, which actually harmed my client.
10 If he has to take the stand, he can testify to the money he
11 lost with that.

12 They also got a judgment against one of the
13 collateral companies, CO Nolt. They got the right to verify
14 compliance with the injunctions. There was also a five-year
15 injunction that was put in place. Ms. Magee got her -- there
16 was a judgment against her in the case; that was vacated.
17 Mr. Thompson himself, the principal, Judge, had a judgment
18 entered against him, which he agreed upon, of \$1,200,000.

19 The reality is they received a lot, which is why
20 they were -- one of the reasons they were in that
21 classification of separate class because they got more than -
22 - frankly, more than the other unsecureds did get in this
23 case. The fact that they agreed, as part of that whole
24 settlement, which is integrated into this agreement, that as
25 long as they got at least ten percent, they'd go along with

1 the plan, I think that is clearly fair and equitable
2 treatment. That's all I have to say, Judge.

3 THE COURT: Okay. Thank you.

4 All right. Mr. Kizner, if you're ready to proceed.

5 MR. KIZNER: Your Honor, yes, I am. One thing
6 before we begin, Your Honor, I think, because we were talking
7 about the settlement agreement and there's confidentiality
8 provisions in there -- that's why there was part of the
9 settlement agreement that was blacked out when it was filed
10 with the 9019 notice. Could the record be sealed, in case we
11 go into areas that could -- I just don't want to have an
12 issue where, later, someone makes a claim that
13 confidentiality was breached by the public record.

14 THE COURT: Is it -- I'm sorry. There's a concern
15 that somebody is going to sue for a breach --

16 MR. KIZNER: Well, there's --

17 THE COURT: -- or is there --

18 MR. KIZNER: -- confidentiality provisions --

19 THE COURT: -- concern that the --

20 MR. KIZNER: -- with the --

21 THE COURT: -- actual --

22 MR. KIZNER: -- with --

23 THE COURT: -- is damaging, if it's --

24 MR. KIZNER: No, it's --

25 THE COURT: -- in the -- in a public record?

1 MR. KIZNER: It's for potentially -- there's third
2 parties that are not here today that were part of that
3 settlement agreement, Your Honor. And the concern is that I
4 don't want there to be any question that Dalmatia violated
5 the confidentiality provision; that's my concern. And
6 frankly, it should be the concern, I think, of the debtor, as
7 well. I mean, they were all part of the confidentiality
8 agreement.

11 MR. MASCHMEYER: Your Honor, I'm looking at the
12 settlement agreement that's blacked out. I don't know that
13 any of the issues that are blacked out are really relevant to
14 what we're talking about here, so I don't -- I mean, I
15 haven't -- if you're asking, Judge, do I have any objection
16 to anything being held under seal, the answer is no.

19 MR. MASCHMEYER: I -- yeah, I was going to say, I
20 just don't. I mean, I haven't spoken to my client, but I
21 don't see the need for it. The settlement agreement that was
22 filed with the Court was already redacted. I don't know that
23 those issues are going to be -- I guess we'll see as the case
24 goes on, but I don't know that they're even going to be
25 brought up.

1 THE COURT: All right. Mr. George, do you have any
2 thoughts on this?

3 (Participants confer)

4 MR. GEORGE: One second, Your Honor.

5 THE COURT: Sure.

6 (Participants confer)

7 MR. GEORGE: Your Honor, I don't care if the
8 redactions remain through the hearing, if that's what Your
9 Honor --

10 THE COURT: All right. I'm inclined to --

11 MR. CIANCIULLI: My apologies, Your Honor.

12 (Participants confer)

13 THE COURT: If you want to take a moment to talk to
14 Mr. Maschmeyer, or you want to talk to me.

15 MR. CIANCIULLI: Maybe I can make a comment that
16 can kind of cut through it. I think the idea would be --

17 THE COURT: Why don't you identify yourself for the
18 record.

19 MR. CIANCIULLI: Yes, Your Honor. Jeffrey
20 Cianciulli, appearing on behalf of no one today, but
21 potentially a witness. I was counsel, special counsel to the
22 debtor and operated part of the negotiated settlement
23 agreement.

24 There were some aspects of the agreement that were
25 held confidential, as they related to ingredients in --

1 THE COURT: Uh-huh.

2 MR. CIANCIULLI: -- the recipe. I don't see any
3 reason why, if the parties don't refer specifically to those
4 ingredients, that anything would need to be held sealed by
5 the Court. Is that a fair statement?

6 MS. MAGEE: I -- I actually am fine with that.

7 MR. CIANCIULLI: Yeah.

8 MS. MAGEE: That's fine.

9 MR. CIANCIULLI: I mean, just to --

10 MS. MAGEE: And it's --

11 MR. CIANCIULLI: -- kind of help --

12 MS. MAGEE: -- blacked out --

13 MR. CIANCIULLI: -- the Court --

14 MR. GEORGE: -- here, too.

15 THE COURT: Well --

16 MR. CIANCIULLI: -- cut through the --

17 THE COURT: -- it sounds like what you're saying is
18 where I was headed with this, as well. It seems to me, when
19 we get into the testify, if -- Mr. Kizner, if you think
20 you're getting into a subject that involves something that
21 was blacked out, but stopped there, and whether -- either on
22 the record or off the record, we'll talk about the problem.

23 MR. KIZNER: Yeah. And Your Honor, just for
24 clarification, my concern came from some of the openings
25 about what Dalmatia received, and I just didn't want it to go

1 into -- I didn't want this to snowball later, so I wanted to
2 raise the issue now. But I can bring it up later -- I don't
3 think our testimony is going to touch on any of that --

4 THE COURT: Do you --

5 MR. KIZNER: -- I don't plan on it, so --]

6 THE COURT: Is there anything anybody said that was
7 confidential --

8 MR. KIZNER: No, but when --

9 THE COURT: -- in the --

10 MR. KIZNER: -- you start --

11 THE COURT: -- opening statements?

12 MR. KIZNER: -- talking about injunctions and stuff
13 like that, that -- my concern is going to go into those areas
14 later, potentially, on cross-examination.

15 THE COURT: All right. Well, let's just see if we
16 do.

17 MR. KIZNER: Yeah, okay.

18 THE COURT: If --

19 MR. KIZNER: I just wanted to raise the issue, Your
20 Honor.

21 THE COURT: If you start having concerns about
22 that, we'll stop there and we'll all address it at that
23 point.

24 (Participants confer)

25 MR. KIZNER: I would like to call Ms. Magee. And

1 is it all right if I stand over there, so she's more eye view
2 with me?

3 THE COURT: It will depend on whether you can --
4 you're being picked up for the recording, so you can start --

5 MR. KIZNER: All right if --

6 THE COURT: -- but I may --

7 MR. KIZNER: -- I stand --

8 THE COURT: -- tell you --

9 MR. KIZNER: -- over here?

10 THE COURT: -- you can't. Is there some reason you
11 need to stand over there, as opposed to the podium?

12 MR. KIZNER: I don't think it means too much of a
13 difference, but it -- well, I just wanted the witness
14 comfortable with my position.

15 THE COURT: Then I'd rather you be at the podium.

16 MR. KIZNER: All right.

17 THE COURT OFFICER: Please place your left hand on
18 the Bible and raise your right hand.

19 MAIA MAGEE, WITNESS FOR THE MOVANT, SWORN.

20 THE COURT OFFICER: Please be seated.

21 (Participants confer)

22 THE COURT OFFICER: Please state and spell your
23 name for the record.

24 THE WITNESS: Maia Magee, M-a-i-a, M-a-g-e-e.

25 THE COURT OFFICER: Please state your address for

1 the record.

2 THE WITNESS: 21 Mohawk Trail, Greenfield, Mass,
3 01301.

4 THE COURT OFFICER: Thank you.

5 THE WITNESS: You're welcome.

6 DIRECT EXAMINATION

7 BY MR. KIZNER:

8 Q All right. Ms. Magee, can you tell me where you work?

9 A Dalmatia Import Group.

10 Q And just so the Court is familiar, or the Judge in
11 particular, what -- explain what Dalmatia does.

12 A So Dalmatia, we're a specialty food company. We are
13 basically -- we're the company that brought fig spread to
14 America, it's like a big jam. So we introduced it to the
15 marketplace here, several -- many, many years ago, taught
16 stores how to make it or how to sell it, how consumers how to
17 use it with cheese. We basically created a new category in
18 the supermarkets.

19 Q Okay. And what's your position with the company?

20 A I am pretty much everything. We're very small, so
21 everything from high level to low level, all of it, as much
22 as I can, whenever, whatever is needed.

23 THE COURT: Can you tell us -- could you tell us
24 your formal title?

25 THE WITNESS: Sure. President and Co-Founder.

1 BY MR. KIZNER:

2 Q And when did you first start Dalmatia?

3 A So 1995.

4 Q And how has the company done since then?

5 A Well, in 1995, we were -- we were an idea. We weren't
6 anything; we were just an idea. So I would say we -- we've
7 done okay. You know, we've -- we've grown. We had no stores
8 when we started, we had no products when we started. So we
9 invented a market and we went store to store, door to door,
10 selling, trying to talk stores -- tell them how to use this
11 and tell them how great it would be. So I think we've done
12 okay. Now we're in like many chains and specialty food
13 stores. We built it from nothing. I'm -- I'm happy about
14 it.

15 Q Okay. And does Dalmatia -- what is its role with
16 manufacturing?

17 A What's the question?

18 Q What's its role with the manufacturing of your products?

19 A What's its role?

20 Q Yeah.

21 A So --

22 Q Do you manufacture specifically, or how does that work?

23 A Well, when we were with Lancaster, we -- you know, we
24 had them co-packing. But we oversee all manufacturing. I'm
25 actually personally involved in a lot of the quality issues.

1 I care a lot about it because we've gotten our brand to a
2 pretty high level. So, at that point, maintaining -- you
3 know, you need different skills to do -- to start a business,
4 and you need different skills to keep it. And the skills now
5 are keeping it, you know, keeping people from stealing
6 recipes, but also making sure that everything is really top
7 notch. So I actually love that part of the job.

8 Q Okay. And you said -- you know, you mentioned that it's
9 a small company. How many employees do you have?

10 A We're really small. Me and Harvey Grossman -- actually,
11 who accompanied me today -- he's heading up sales, and then
12 my -- the co-founder, Neb. He oversees more production, but
13 he's also involved. So two, three.

14 Q So, despite your growth since 1995, you're still a
15 pretty small company?

16 A We are, we are. And I like it that way. I mean, it
17 would be nice to have a few more people, but yeah --

18 Q Okay.

19 A -- very hands-on.

20 Q Great.

21 Let's talk a little bit about your relationship with the
22 debtors. Are you familiar with the claims that -- if you can
23 explain your relationship, to start with, with Earth Pride
24 and Lancaster.

25 A Like what they -- okay. So they were our -- we hired

1 them to do co-packing for us. We met them in -- I think I
2 found them in 2006, and we hired them to be our co-packer.

3 Q Can you explain to the Court just what "co-packing"
4 means?

5 A Okay. So a co-packer is a company -- basically, we --
6 we hired them to do things the way we wanted for our recipe.
7 We showed them the recipe, we told them the ingredients, we
8 told them where to get the ingredients. We told them how to
9 make the product, all the procedures. We delivered jars to
10 them, we delivered labels to them. And then, with all of
11 these components that -- that we had, we taught them how to
12 put it all together and make it based on our specifications.

13 And it took them about a year to get them up to speed,
14 teach them everything we knew. We even brought one of their
15 people over to our plant in Europe, to teach him more. And -
16 - yeah, and then we started business like a year after that,
17 we started doing business.

18 Q So is it fair to say that there's a lot of trust that
19 has to go into a relationship to become a co-packer?

20 A There's a lot --

21 MR. GEORGE: Objection --

22 A -- of trust that --

23 MR. GEORGE: -- Your Honor.

24 A Oh.

25 MR. GEORGE: He's leading really beyond the pale.

1 I'm trying not to object, but ...

2 THE COURT: All right. I'll overrule that
3 objection because it's a modest point. But try to be careful
4 about your questions.

5 THE WITNESS: Okay. So what was the question?

6 BY MR. KIZNER:

7 Q You were discussing --

8 A You said is there trust. There's -- so there's -- there
9 is a high level of trust. But you also have contracts, so we
10 had an NDA and -- before we gave them anything; you have to
11 cover yourself. And then we had a contract before we started
12 doing any business.

13 Q So did -- other than the co-packing, did they -- did --
14 what else did Dalmatia do, if anything?

15 A With them?

16 Q Well --

17 A What's the question?

18 Q Did they do anything else besides co-packing?

19 A Lancaster?

20 Q The debtors. The debtors, yeah.

21 A Lancaster and the -- when I say "Lancaster," just to be
22 clear, I -- he -- all -- I mean all of the companies, like
23 all of those sister companies he's got. I'm not going to say
24 them every time, I don't even think I knew them all. But
25 like the Earth Pride Organics and CO Nolt and Thompson, so

1 just so that's clear.

2 So no, that's all they did for us.

3 Q Okay. Who's -- can you talk a little bit about sales?

4 A So sales --

5 MR. MASCHMEYER: Your Honor, I'm going to --

6 A -- we outsource --

7 MR. MASCHMEYER: -- object -- Your Honor, I'm going
8 to object at this point. I'm trying to think of what the
9 relevance is to this case. Second of all, we've already
10 tried the litigation in District Court, and we're talking
11 about a settlement agreement. It seems like they're almost
12 getting ready to try the whole case here, I -- it seems like
13 it's way off base.

14 THE COURT: Mr. George, did you want to add
15 something?

16 MR. GEORGE: Well, I mean, that's kind of my point,
17 Judge. I think I'd like to try to focus on, you know, this -
18 - we're at a settlement agreement, and this is what happened.
19 I think that's the issues here.

20 THE COURT: Do you have much more in the way of
21 background?

22 MR. KIZNER: Your Honor, I -- we're moving into the
23 more specifics. I think it's really hard for the Court -- at
24 least it would be for me -- to understand what happened here
25 without some context of what the relationship was and a

1 little bit about what the prior litigation is. I mean, I
2 don't have a ton of stuff. I mean, 20 minutes maybe.

3 THE COURT: All right. I'll --

4 MR. KIZNER: But I just think the background is
5 useful.

6 THE COURT: Twenty minutes for background, really?

7 MR. KIZNER: No, a total of questioning, Your
8 Honor. I mean, I don't expect this to go on for hours, but -
9 -

10 THE COURT: All right. All right. I'll overrule
11 the objections. I'll let you --

12 MR. KIZNER: Okay.

13 THE COURT: -- complete your foundational picture.

14 BY MR. KIZNER:

15 Q So did -- what happened with your relationship with --
16 did anything happen to your relationship with the debtors at
17 any point?

18 A So -- yes. So we worked for many years, from 2007 to
19 2015. In 2015, there were a lot of quality issues. It was -
20 - I don't know -- six to eight months of quality problems,
21 which culminated at the end of 2015 and basically --

22 MR. MASCHMEYER: Your Honor, I'm going to object at
23 this point. Now we are retrying the case.

24 THE WITNESS: It's --

25 THE COURT: Overruled. What I'm taking this for is

1 not the truth of the matter, but the state of mind, as you're
2 -- as the parties are entering into the settlement.

3 MR. MASCHMEYER: Yes, Judge.

4 THE COURT: So rest assured, it's not going to be
5 prejudicial. So you can finish your answer.

6 THE WITNESS: Okay.

7 BY MR. KIZNER:

8 Q What did you mean by "quality problems"?

9 A Just quality. Like they weren't making it -- I don't
10 know if the machines were the problem, I don't know if the
11 people were. We never actually figured that out. It didn't
12 really matter. At the end of the day, I have a brand, I have
13 to keep it at a high level. And if it's not being
14 manufactured at a high level, that's -- that's lowering my
15 value. So my job is to actually make sure that it stays at a
16 high value. You know, like water -- there was liquid at the
17 top of the jar, sometimes it would soupy; various things,
18 really.

19 Q So what ultimately happened with the debtors, once these
20 quality issues were discovered.

21 A So -- okay. So, basically, we stopped doing business.
22 Lancaster, at that time, got very aggressive with us. He
23 started blackmailing me, saying, you have to take all of this
24 product.

25 MR. GEORGE: Your Honor, I object. Move to strike.

1 THE COURT: Sustained.

2 THE WITNESS: Okay. How else can I say it?

3 THE COURT: Just try not to use such colorful words
4 that are so conclusory.

5 THE WITNESS: Okay.

6 THE COURT: You want to just describe what actually
7 happened.

8 THE WITNESS: Okay. Lancaster would not give me
9 any good product, and insisted that I take bad product.

10 MR. KIZNER: Okay.

11 THE WITNESS: At that time, I did not know he was
12 already working with my distributor without my knowledge, and
13 they were -- they sort of teamed up. Eventually, basically,
14 it became clear -- where do I go? Maybe you just ask the
15 next question.

16 BY MR. KIZNER:

17 Q Well, what did you mean by "teamed up" with the
18 distributor? Because I -- we haven't talked about the
19 distributor. So the Court understands that --

20 A Okay. So --

21 Q -- that element.

22 A -- the distribute -- the -- I'll just give you, in an
23 nutshell, what this -- the case is about, for the sake of
24 time and everyone. So, in an nutshell, the litigated case
25 was basically about Lancaster -- Lancaster went behind my

1 back.

2 MR. MASCHMEYER: Objection.

3 THE WITNESS: Okay. Hold on. Lancaster, without
4 my knowledge, and without telling me, worked with my
5 exclusive distributor -- also, who was -- I was basically
6 exclusive with both of them. They worked together, used my
7 recipe that I had taught Lancaster how to make, to make --
8 and they used that to make a competing brand, which they then
9 used to try to erase me from the marketplace that I had
10 created.

11 BY MR. KIZNER:

12 Q Okay. And what --

13 A I think that's pretty --

14 Q What resulted from this?

15 A So, to survive -- well, in addition, they counterfeited.
16 They created lookalike jars that looked just like mine, with
17 my label, used my trademark and my product and flooded the
18 marketplace, so I had no business for months, very low sales.
19 Just to survive, I had to sue them. I was afraid we were
20 actually going to go out of business. And that's -- that's
21 what could have happened.

22 Q Okay. So could you just explain to the Court the
23 litigation. You said you sued them. What happened with
24 that?

25 A Sure. The claims? Do you want to know the claims?

1 Q Yeah, about the claims and what ultimately happened.

2 A So there were many claims, I won't go into all of them.
3 There were -- you know, there were joint claims. We had to
4 sue Lancaster and FOODMatch because they were working
5 together. So we had misappropriation of trade secrets,
6 trademark infringement, counterfeiting. One of those is
7 under the Lanham Act, I think it's -- is it trademark
8 infringement under the Lanham Act? Theft, which is
9 conversion, technically, I think that's the word. And then
10 there was a -- there were some contract claims. The ones I
11 mentioned, we actually won, we won all of those.

12 Q Just --

13 A There were more, but ...

14 Q Just for context, can you -- how long was this
15 litigation?

16 A The litigation, there was months and months of
17 discovery. I was deposed for four days straight; it was
18 exhausting. I was the only one --

19 THE COURT: That's not what he asked you.

20 THE WITNESS: Sorry. Okay.

21 THE COURT: He asked you what was the time frame of
22 the litigation.

23 THE WITNESS: So, actually, the litigation itself
24 went pretty fast, I think, from what I hear. We started in
25 early 2017 -- or '16, and by early 2017, we were at trial.

1 And then we were -- we had a full month at trial, a full
2 month of trial --

3 MR. KIZNER: And --

4 THE WITNESS: -- in front of Judge Smith.

5 BY MR. KIZNER:

6 Q And what was the result of the trial?

7 A Well, the jury --

8 MR. MASCHMEYER: Your Honor --

9 A -- sided --

10 MR. MASCHMEYER: -- objection.

11 A -- with us.

12 MR. MASCHMEYER: Your Honor, the result of the
13 trial is already -- it should be of record. It's been -- the
14 Court has already issued findings and results. I -- for her
15 to -- for the witness to now characterize that, I would think
16 the written documents of the trial would be the best evidence
17 of that. So I'm going to object to her testifying --

18 THE COURT: I'm going to --

19 MR. MASCHMEYER: -- as to what --

20 THE COURT: -- sustain that.

21 MR. MASCHMEYER: -- she thinks happened.

22 THE COURT: You can describe generally that there
23 was some success at trial, I'll let you --

24 THE WITNESS: Uh-huh.

25 THE COURT: -- go there. But let's not get that

1 detailed about what the outcome was.

2 THE WITNESS: Uh-huh. Uh-huh.

3 BY MR. KIZNER:

4 Q Okay. Now was there a verdict?

5 A Yep, there was a verdict. It was -- it was basically in
6 our favor, for the most part. We got most of our claims.

7 MR. MASCHMEYER: Again, objection.

8 THE WITNESS: I mean, we're good. I --

9 THE COURT: Overruled.

10 BY MR. KIZNER:

11 Q Do you recall how much the verdict was for?

12 A So the verdict -- okay. So we're talking money now --

13 Q Uh-huh.

14 A -- with Lancaster? So over two -- I want to say 2.16,
15 something like this, 2.1, 2.2 was what Lancaster was supposed
16 to pay me.

17 Q Uh-huh.

18 A That's without fees. I think with -- I don't understand
19 how all the costs and things work, but with costs, it would
20 have been closer to one -- 2.5, something like that.

21 Q Okay. So let's move on to the bankruptcy proceedings
22 now.

23 A Okay.

24 Q What happened after you received the jury verdict?

25 A So, after the jury verdict, I don't know. I mean, I

1 don't know all these dates, but the papers were due in front
2 of Judge Smith. We were seeking a new trial, which could
3 have led to punitive damages. We were seeking for injunctive
4 relief. We were seeking a permanent forever injunction,
5 actually. And papers were due. And I think the bottom line
6 of it all was, instead of filing papers, Lancaster filed this
7 case.

8 Q Okay. So, if you recall that you went back -- was there
9 any opportunity for you to go back to Judge Smith, if you --

10 A We did.

11 Q -- discussed that?

12 A I don't know, again, exactly, but I think we actually
13 requested of this Court that we go back to Judge Smith, which
14 we eventually did. We -- we went and prepared for a hearing,
15 and then Judge Smith really wanted a settlement, and I wanted
16 to support that. He was very intent on a settlement.

17 Q So let's talk about what happened when the case returned
18 to Judge Smith.

19 A Okay.

20 Q What -- there was a settlement conference, or how did
21 that get initiated, the settlement conference?

22 A Well, we actually showed up -- we showed up for the
23 hearing, we -- we were all prepared, we had some witnesses,
24 and we were -- we were going for all of our things. We were
25 going to try to get a new trial, permanent injunctive relief

1 because, you know, now he had our recipe, and from our
2 perspective, we didn't trust him to not use it. So we were -
3 - we were trying for that. We were thinking maybe extra
4 punitive damages we could get with a new trial. Again, I
5 don't know all the specifics, that's really overview.

6 But we showed up, and Judge Smith really -- he really
7 loves the settlement conferences. He wants to see peace,
8 he's a good person. He -- I feel like he wanted peace, and I
9 wanted to support that, so we did. We showed up, and we
10 ended up -- we ended up having a settlement conference on
11 that day, instead.

12 Q So, before you went that day, though, you didn't know it
13 was going to be a settlement conference?

14 A No, no.

15 Q Okay.

16 A Because we had already been to some, and they really
17 hadn't gone well, so we -- we went to so many settlement
18 conferences.

19 Q So can you describe, you know, what happened that day?

20 A It was a really long day. It was -- I don't know. I
21 think we got out of there at like -- I mean, it was so late;
22 it was like 10, 11 at night. I -- it was really long. And
23 he was just really committed to making peace and to trying to
24 get us to settle. So, you know, we did. I mean, I'm not
25 going to argue with a judge. If a judge is saying he wants a

1 settlement conference and he wants us to settle, he's the
2 Judge, so that's the direction we went in.

3 Q And how many hours were you there that day?

4 A It was a long day. I mean, 9 to 11 at night, something
5 like this.

6 Q So --

7 A Don't quite me. I mean, really, I didn't -- I wasn't
8 looking at the clock. I was exhausted, we all were --

9 Q You were --

10 A -- at the end of --

11 Q So you were --

12 A It was a --

13 Q -- there well --

14 A -- full day.

15 Q -- after hours?

16 A Well after.

17 Q Okay.

18 A He stayed late. He stayed, and I thanked him after. I
19 mean, it was really, yeah, above and beyond.

20 Q Okay. And who was there that day?

21 A So I was there. My -- the co-founder with me was there,
22 Neb Chupin, my lawyer, Lauren Handel, Mr. Cianciulli was
23 there on behalf of Lancaster, and then Mr. Thompson was
24 there, too.

25 Q Okay. And did the Judge have anyone else involved in

1 the settlement conference other than himself -- I mean, from
2 the Court's perspective, or was it just the Judge?

3 A I don't think so. I think it was just him. There was -
4 - there was someone there, a clerk maybe might have been in
5 and out of the room, but he was -- he was leading it, he was
6 driving it.

7 MR. KIZNER: Okay. Your Honor, I'd like to
8 introduce the settlement agreement. Can I hand a copy to the
9 witness.

10 THE COURT: Well, wait. Why don't you hand it to -
11 -

12 MR. KIZNER: Sure.

13 THE COURT: -- the court reporter, and she'll mark
14 it as D-1 for Dalmatia. I don't know what we'll call the
15 debtor, though. So I guess, if there are debtor exhibits,
16 we'll call them "Debtor 1," but call this D-1.

17 THE ECRO: D-1?

18 THE COURT: Yeah.

19 (Settlement Agreement marked D-1 for identification)

20 (Participants confer)

21 THE COURT: I assume the other side has the
22 document.

23 MR. KIZNER: This is docket -- this was filed with
24 the 9019 notice. I have an extra copy --

25 THE COURT: All right. So --

1 MR. KIZNER: -- but it's part of the court record.

2 THE COURT: All right. You've seen it before.

3 BY MR. KIZNER:

4 Q Okay. This is -- what's been handed to you is a
5 settlement agreement. Are you -- it's been marked as D-1 for
6 the Court. Are you familiar with the document?

7 A Yes.

8 Q Okay. And what is this document?

9 THE COURT: Well, let's skip that. We all know
10 this is the settlement agreement, it's been approved by the
11 Court under a 9019 motion. So you understand that, right?

12 THE WITNESS: I do. We're good.

13 THE COURT: Okay.

14 MR. KIZNER: Okay.

15 THE COURT: So why don't you get to the heart of
16 what --

17 MR. KIZNER: Okay.

18 THE COURT: -- you want to get to about the
19 settlement agreement.

20 MR. KIZNER: Yeah.

21 BY MR. KIZNER:

22 Q So let's go to Page 8. If you see the pages are on the
23 top, where it says "document," Page 8 of 15?

24 A I do, yes.

25 Q Okay.

1 A Okay.

2 Q Okay. And on the second page, this is dated October
3 11th, 2017.

4 A I'm on page --

5 Q It has --

6 A I'm on Page 8.

7 Q I'm sorry, Page 9, the second page of the handwritten
8 document, which is Page 9.

9 A Yes.

10 Q Okay. This is -- can you explain what this document is,
11 the handwritten document?

12 A Yeah. This is -- this is the -- the Judge, again, he
13 lead this. He wrote it. This is his handwritten settlement
14 agreement that we left with.

15 Q Okay. And so it -- this is the culmination, after 12 to
16 14 hours --

17 A Yes.

18 Q -- being there that day.

19 A Yes.

20 Q Okay. Can you read what's in Paragraph 3?

21 A Sure.

22 Q Start --

23 MR. GEORGE: Your Honor, do you mean to yourself --
24 to herself? Because I mean, it says what it says, and I
25 don't think we need the witness to read it.

1 MR. KIZNER: No, I'm asking her if it's even --

2 THE WITNESS: I'll read it --

3 MR. KIZNER: I'm asking her if it's legible.

4 MR. GEORGE: Oh.

5 MR. KIZNER: There's some --

6 MR. GEORGE: You didn't ask if it was legible, you
7 asked her to read it.

8 THE WITNESS: Do you --

9 MR. KIZNER: I asked --

10 THE WITNESS: -- want me to --

11 MR. KIZNER: -- can you read it. So I'll clarify
12 the question.

13 MR. GEORGE: Well, you said "can you read it" --

14 MR. KIZNER: There --

15 MR. GEORGE: -- I thought you were asking her to
16 actually read it --

17 THE COURT: All right. Let's --

18 MR. GEORGE: -- into the record.

19 THE COURT: Let's move on.

20 BY MR. KIZNER:

21 Q The paragraph -- the third paragraph down --

22 A Uh-huh. Uh-huh.

23 Q -- "Dalmatia shall have," there's some language kind of
24 squeezed at the end there, right?

25 A I see it.

1 Q Like what is that language? Can you even read it?

2 A Okay. So -- yeah --

3 Q Is it --

4 A -- it's tough --

5 Q -- legible?

6 A -- to read. So I'll just read it. Is that fine with
7 everyone?

8 "Dalmatia shall have the ability to pursue its
9 current claim in Bankruptcy Court, but will support
10 any plan not inconsistent with this agreement, as
11 long as it pays out at least ten percent."

12 Q And was this added at a separate time to the rest of the
13 handwritten document?

14 A I'll tell you when this was added. This was, I believe,
15 the very last thing we did that night. And that's why that
16 part:

17 " -- but it will support any plan not inconsistent
18 with this agreement, as long as it pays out at
19 least ten percent."

20 The Judge wrote that in at the very ends. I barely
21 remember it. And I barely remember it, honestly. It was
22 very late, and it was kind of thrown in there, and that's why
23 it's smaller and it's in the margins.

24 Q And is there any reference in the other -- in the rest
25 of this two-page handwritten document, to anything regarding

1 the bankruptcy?

2 A I would have to read through the whole thing. I don't
3 think so. He --

4 THE COURT: Why don't you save that point for
5 closing?

6 THE WITNESS: Okay.

7 BY MR. KIZNER:

8 Q So what's your understanding of that language that's in
9 the handwritten agreement, that you just read?

10 A This part again. This was so -- my understanding is
11 that, if Lancaster can only afford to pay the creditors ten
12 percent, I will not object to that.

13 Q So your understanding was to all creditors.

14 A Creditors.

15 Q Unsecured creditors.

16 A Unsecured. I guess there's a class distinction with
17 secured and unsecured, so I am an unsecured, but yes.

18 Q Okay. Was there even any -- was there -- you said this
19 was added at the end. Was there a discussion about
20 bankruptcy during the settlement conference?

21 A If there was, I cannot recall it, and I really don't
22 think there was. This was it. So, basically, the main point
23 here was that:

24 "Dalmatia shall have the ability to pursue its
25 current claim in Bankruptcy Court."

1 And probably -- you know, I think maybe somewhere -- I
2 really don't remember this, but maybe at the very end,
3 someone said, well, what if Lancaster --

4 MR. MASCHMEYER: Objection.

5 A -- can't afford --

6 MR. GEORGE: Your Honor --

7 A -- to pay more --

8 MR. GEORGE: -- objection.

9 A -- than ten or --

10 THE COURT: Sustained. You can't speculate.

11 THE WITNESS: Okay.

12 THE COURT: If you remember, you remember, you can
13 tell us.

14 THE WITNESS: Okay.

15 THE COURT: If you just don't remember, don't try
16 to guess.

17 THE WITNESS: Okay. So then I don't -- I think
18 that's it, what I said stands, and that's all --

19 BY MR. KIZNER:

20 Q Okay. What --

21 A Very little discussion happened around this.

22 Q What about --

23 A And it was late.

24 Q What were the -- can you explain to the Court the key --
25 other than the bankruptcy, what were the key terms of the

1 settlement?

2 A I mean, basically, we were being asked to give up our
3 right to a new trial, from my perspective, giving up pretty
4 much all our rights: A right to a new trial with potential
5 punitive damages and our right to see a permanent forever
6 injunction. So we were looking to, basically, say he
7 couldn't make fig spread because we're the ones who taught
8 him how to make it, so -- and he had proven that he would
9 steal it. So, from our perspective at that time, we were
10 just like, he can't make it because he's going to steal it.

11 So we were looking for -- an even at the settlement
12 conference, I said, I need one of two things, I either need
13 some kind of injunction or a boatload of cash. And I think
14 that that was my quote. And I said, I have to leave with one
15 of these things, we need -- either we need to recover some
16 money, or we need to stop you from making product because you
17 shouldn't be making it anyway, and using our -- our stock.

18 I -- I'm kind of rambling. Did I answer the question?

19 Q Yeah.

20 A All right.

21 Q In terms of the -- in terms of the -- was there any
22 money that was supposed to be paid to you under the
23 settlement agreement?

24 A Yes, I --

25 Q Outside of the bankruptcy.

1 A So, basically, there were two pieces to the money: A
2 large sum, which Thompson and I -- Thomson and I, actually,
3 at one point in the night, left the room. I invited him to
4 leave the room. It was very contentious at the beginning.
5 We were all tense. We weren't prepared to have a settlement
6 conference when we showed up, and it was very tense. And at
7 one point, I said, you know, would you like to leave the --
8 let's leave the room. And he and I went out, and I thought,
9 you know, maybe we can connect, maybe --

10 MR. MASCHMEYER: Your Honor, I'm going to object,
11 Judge. Anything they discussed would be hearsay and --

12 MR. GEORGE: No, it might be an admission. But
13 it's parol, I think, isn't it?

14 THE COURT: It's a little late for a parol evidence
15 objection. Overruled.

16 THE WITNESS: So --

17 THE COURT: Go ahead.

18 THE WITNESS: Thank you.

19 So we left the room. And I thought that was very -
20 - it was very -- kind of powerful, it was -- it meant
21 something. We stepped out. We hadn't talked in years. You
22 know, we had gone through a terrible litigation. They're
23 very emotionally draining, they're -- it's very hard. And
24 you know, I was -- I felt like, for a year, I had been
25 fighting for my -- my survival. And we stepped out and it

1 was -- it was kind of like, wow, we connected, we came to
2 something. And he agreed to pay me a large sum of money,
3 which I won't -- I won't say how much because it's -- I'm not
4 -- I shouldn't, so that, and then also the bankruptcy claim.
5 So the money was basically going to be the offset for me,
6 since I was about to give up, basically, all of my rights.

7 You know, he -- Mr. Thompson even gave me a hug.
8 Like we were out there, and he gave me a hug. It was like we
9 -- we had -- I felt like it was meaningful, and I believed
10 him. I --

11 BY MR. KIZNER:

12 Q Okay. Well, let's just focus on the money for a second.

13 A Okay. Sorry.

14 Q Did you ever get any money that was promised to you,
15 that was part of this settlement agreement?

16 A I did not.

17 MR. GEORGE: Your Honor, I object. She's not going
18 to let them -- she's not going to talk about how much it is,
19 or anything like that, but she's going to talk about those
20 details?

21 THE COURT: What's the relevance?

22 MR. KIZNER: Because, Your Honor, they've already
23 talked about how they believe we've received benefits that
24 are going to cause a business justification for different
25 treatment. If he -- it's critical whether or not she

1 received any benefit under --

2 THE COURT: I'm not sure --

3 MR. KIZNER: -- the settlement agreement.

4 THE COURT: -- performance of those benefits is the
5 same thing as negotiating to get the benefits, so I will
6 sustain the objection.

7 MR. KIZNER: Okay.

8 BY MR. KIZNER:

9 Q What about the -- what about the other -- was there
10 anything else that was received, other than money, or that --
11 other than the promise of money?

12 THE COURT: Actually, let me stop for a second.

13 I'm rethinking that. I need to ask a question of the debtor
14 and the committee then.

15 To the extent you want to argue -- and I thought I
16 heard this in the opening statement -- that I should factor
17 in as to whether the deal is fair and equitable the other
18 benefits, why isn't it relevant whether -- at least by the
19 time we got to confirmation, whether Dalmatia had actually
20 received any promise for other benefits that were due at that
21 time? Wouldn't that be relevant?

22 MR. GEORGE: Yes.

23 MR. MASCHMEYER: Well --

24 THE COURT: Okay. All right. So, with that in
25 mind, maybe --

1 MR. MASCHMEYER: Via the confirmation.

2 THE COURT: -- you can --

3 MR. GEORGE: Wait, Your Honor.

4 THE COURT: -- rephrase --

5 MR. GEORGE: He --

6 THE COURT: -- your question.

7 MR. MASCHMEYER: Your Honor, my -- if we're going
8 to talk about what benefits Dalmatia received, I, per se,
9 have no problem if she wants to point to the settlement
10 agreement to the benefits that they were going to get under
11 that. But it seems like we're going off into some mysterious
12 benefits that weren't incorporated into this settlement
13 agreement, and that's just not right. I mean, if there was -

14 -

15 MR. MASCHMEYER: -- settlement --

16 THE COURT: I have to --

17 MR. MASCHMEYER: -- discussions between --

18 THE COURT: -- decide whether the fourth amended
19 plan was fair and equitable. And by the time we get to the
20 fourth amended plan, some time had passed from this
21 negotiation. It might affect whether it's fair and equitable
22 at that point.

23 MR. MASCHMEYER: So -- well, let's go through the
24 time limit then. You're limiting the questions to after this
25 settlement agreement was entered into?

1 MR. GEORGE: And at the confirmation hearing.

2 THE COURT: And the confirmation -- yes, that's why

3 --

4 MR. MASCHMEYER: And if --

5 THE COURT: And that's --

6 MR. MASCHMEYER: -- there were --

7 THE COURT: -- why Mr. George --

8 MR. MASCHMEYER: -- discussions --

9 THE COURT: -- agreed with me.

10 MR. MASCHMEYER: -- between them?

11 MR. KIZNER: The question was just focused on
12 whether or not there was monetary performance on this.

13 THE COURT: And what I'm saying is you need to --
14 you may need to focus the question a little more --

15 MR. KIZNER: All right.

16 THE COURT: -- for it to be relevant. I think
17 there is some relevance to it. So I'm sustaining the
18 objection as to form, and party as to substance.

19 (Participants confer)

20 BY MR. KIZNER:

21 Q What was supposed to -- well, can you explain what was
22 supposed to be paid monetarily, without saying the number?

23 A I was --

24 MR. GEORGE: Objection, Your Honor. By whom?

25 THE COURT: So objection to the form of the

1 question.

2 MR. GEORGE: Yes, Judge.

3 THE COURT: Sustained. Rephrase it.

4 BY MR. KIZNER:

5 Q Okay. If you could explain, other than Earth Pride and
6 Lancaster -- so Mike Thompson and other companies that were
7 part of the litigation.

8 A Correct.

9 Q By Mike Thompson and his other companies, not Earth
10 Pride or Lancaster --

11 A Correct.

12 Q -- was any money paid to you under the settlement
13 agreement?

14 A Zero.

15 Q Okay. And that was -- you just -- I think you testified
16 earlier, that was a fair -- that was one of the reasons you
17 agreed to settle, right?

18 A That was -- I needed one or the other. I needed -- you
19 know, basically, the thing we walked away with of any meaning
20 was supposed to be the claim -- the unsecured claim in
21 Bankruptcy Court and a sum that I was supposed to be paid.

22 MR. MASCHMEYER: Objection. Judge, that's not what
23 the agreement says.

24 MR. KIZNER: Your Honor, let's -- I think we're
25 moving ahead. Let's move into the written agreement because

1 the --

2 THE COURT: Well, before you move into the written
3 agreement, there's an objection.

4 MR. MASCHMEYER: Your Honor, she's --

5 THE COURT: (indiscernible)

6 MR. MASCHMEYER: I'm just saying, Judge, that the
7 settlement agreement does not -- there's no requirement in
8 the settlement agreement for sums to be paid. I mean, she's
9 mischaracterizing what this document says, which is what
10 incorporates the terms of the settlement.

11 THE COURT: All right. Let's -- we'll leave that
12 for cross-examination.

13 MR. MASCHMEYER: Okay.

14 BY MR. KIZNER:

15 Q Let's flip back to the beginning of the exhibit, which
16 is the typed agreement.

17 A Okay.

18 Q What -- can you explain what this agreement is?

19 A So this is the -- basically, just the typed version of
20 what the Judge did.

21 Q Okay.

22 A Yeah.

23 Q So this was done to memorialize the handwritten
24 agreement?

25 A Right.

1 Q All right. And is there any other -- is there any
2 reference to payment being made on Page 3?

3 A (Witness reviews exhibit)

4 There is, Clause 7, clause -- actually, 5. I haven't
5 looked at this full agreement in a while.

6 Q And that's what you were referring to when you said
7 payment wasn't made?

8 A The -- again, it doesn't -- it's blacked out, so I'm
9 assuming that's the one.

10 Q Uh-huh.

11 A But yes.

12 Q And you notice on the first page, the first -- where the
13 language is indented, there's a sentence that says, "Dalmatia
14 shall have the ability." Do you see that?

15 A Yes.

16 Q Okay.

17 A That's --

18 Q And that's --

19 A Okay. Sorry.

20 Q No, I'm sorry. That's the same as the other language
21 that was in the handwritten agreement?

22 A That looks to be verbatim, yes.

23 Q And if you go over to Page -- the next page, Paragraph
24 3.

25 A (Witness reviews exhibit)

1 Which page, please?

2 Q Page -- it's -- on the top, it says "Page 3 of 15."

3 A Okay.

4 Q And then Paragraph 3, it starts, "Dalmatia will amend
5 its claims."

6 A Yes.

7 Q Okay. So this wasn't in the first -- the handwritten
8 document, right?

9 A I don't think this was.

10 Q Okay. What's your understanding of this paragraph?

11 A Can I read it?

12 Q Yes.

13 A So "Dalmatia will amend" --

14 THE COURT: Read it -- you don't need to --

15 MR. GEORGE: Your Honor --

16 THE COURT: -- read it out loud.

17 THE WITNESS: Oh, okay. Okay.

18 THE COURT: We all have it.

19 THE WITNESS: So my understanding of this is we
20 have -- we can pursue our claim, our -- as an unsecured
21 creditor, that that claim is fixed, valid, and a, quote,
22 "allowed unsecured claim" in the bankruptcy case. So it's an
23 allowed, secured, valid claim. And it says which will not be
24 challenged by Lancaster or his sister companies or -- or him.

25 BY MR. KIZNER:

1 Q And you testified earlier that you received a verdict
2 for around like 2.1 million --

3 A Right.

4 Q -- plus legal fees.

5 A Plus fees and things.

6 Q And the amount that's agreed upon here is what?

7 A It's less.

8 Q Okay.

9 A That's -- you know, we made some concessions.

10 Q So you made a concession -- as part of the settlement,
11 you made about a million-dollar -- or eight-hundred-thousand-
12 dollar concession --

13 A Yes, lower.

14 Q -- as to the amount of the claim.

15 (Participants confer)

16 A We made concessions, we made a lot of concessions. I --
17 I wasn't happy. I wasn't really happy with the agreement,
18 but you know, that's what it's about. You -- you both give
19 up some things. And I justified within my own mind I'm
20 walking away with an unsecured claim and cash, which he's
21 going to pay me. And that was justifiable in my mind.

22 Q Okay. And you also mentioned -- it's been mentioned in
23 openings, and there was some injunctive relief that was
24 provided. Can you explain what the injunctive relief was to
25 the Court?

1 A So -- do you mean what was agreed to?

2 Q What was agreed to, yeah.

3 A So the injunctive relief was not what we were looking
4 for. Again, compromises have to be made with -- with these
5 things, but it was basically meaningless because of the
6 timing of it and the duration. So we are -- we are a holiday
7 business. We sell at the holidays, Thanksgiving, Christmas,
8 you know, all those holidays. And that's like 70 percent of
9 our business. So an injunction that goes from October to the
10 following October basically is useless because Lancaster
11 stocked -- they can stock up FOODMatch right before that
12 injunction because they knew what was coming.

13 MR. MASCHMEYER: Objection, Judge.

14 MR. GEORGE: Your Honor --

15 MR. MASCHMEYER: This is speculation.

16 THE WITNESS: It's a --

17 MR. GEORGE: And it's running pretty far afield
18 from --

19 THE COURT: Sustained. You need to just describe
20 the injunction, not the efficacy of the injunction. That was
21 -- the question was for you to describe the injunction.

22 THE WITNESS: Okay.

23 BY MR. KIZNER:

24 Q Just describe how long the injunction was, was it -- I
25 think it --

1 THE COURT: Well, she's doing more than that --

2 MR. KIZNER: Yeah.

3 THE COURT: -- and I'm sustaining the objection.

4 THE WITNESS: Maybe I said it then. It was October
5 to October.

6 THE COURT: And what did it enjoin from October to
7 October; what was --

8 THE WITNESS: What was --

9 THE COURT: -- restrained?

10 THE WITNESS: Okay. So Lancaster was -- was not
11 supposed to make fig spread for FOODMatch or fig spread
12 during that time in mid-October to the following mid-October;
13 however, there were carveouts. So they asked me, you know,
14 is it okay if Lancaster keeps -- you know, makes fig spread
15 for -- or fig something for this customer; okay, yes, it's
16 fine, it's small -- they promised it was a small customer.
17 Okay, fine. And is it okay if Lancaster delivers another
18 container load -- which is another 40,000 jars -- to
19 FOODMatch, even though we have this agreement now. It's
20 like, okay, fine, yes, okay, fine.

21 So they supplied -- we basically allowed them to --
22 some leeway there, they were allowed to keep supplying --
23 supplying a very large amount of product. They had already
24 delivered a lot. It's -- it was useless to me. That wasn't
25 -- that's not what meant anything to me. What meant

1 something to me was the money. That's the -- kind of the
2 bottom line of it.

3 BY MR. KIZNER:

4 Q And they mentioned a five-year injunction where -- was
5 this the only injunctive relief you received? Just so that
6 it's clear what the injunctive relief was?

7 A I -- I don't -- I don't even want to call it injunctive
8 -- it was no "relief." I know that's technically the term.
9 What we were going for was a permanent forever injunction.
10 We wanted to stop him from ever using -- doing fig spread
11 because he had no connection with fig spread before we taught
12 him everything we knew. That was our perspective. So this
13 was useless.

14 So, to touch upon your five-year one -- I'm going to
15 just answer you. So the five-year one, it's a non-clause.
16 And I spoke with the Judge about it when he was wanting to
17 put in. He wanted to give us a little extra protection. But
18 it's kind of a non-clause. I'm not going to argue with the
19 Judge. What am I going to say, don't put it in there? I'm
20 not going to tell the Judge not to put something in a
21 settlement agreement.

22 But basically, it's -- it says they can't use our trade
23 secrets for five years. Okay. Well, they can't use our
24 trade secrets ever. It's against the law --

25 MR. MASCHMEYER: Objection, Judge.

1 A -- to use trade secrets, so --

2 MR. GEORGE: Your Honor, I --

3 A That's a nonissue. I'm just answering the question.

4 It's a nonissue.

5 MR. GEORGE: Your Honor, objection. She's not
6 answering the question. She's giving her narrative. It's
7 not even responsive to the question that was asked.

8 THE COURT: All right. Well --

9 MR. GEORGE: I mean, it --

10 THE COURT: -- I'll allow it. The next question
11 was going to be about her perception of the value of the
12 injunction to the company. She has jumped ahead and answered
13 that, so let's just move on to another question.

14 MR. KIZNER: Your Honor, they --

15 THE COURT: I'll overrule --

16 MR. KIZNER: They've raised all --

17 THE COURT: -- the objection.

18 MR. KIZNER: They've raised all these issues in
19 their opening, so --

20 THE COURT: I --

21 MR. KIZNER: Which --

22 THE COURT: You won.

23 MR. KIZNER: Yeah, I know. Okay.

24 THE COURT: Move on to the next question.

25 BY MR. KIZNER:

1 Q So is it fair to say that -- you didn't receive any
2 money from Thompson, right?

3 A Correct, nothing.

4 Q Okay. And you received just this one year that he
5 couldn't make the fig spread?

6 A Which was meaningless to me.

7 Q Okay.

8 A I told you why, the timing of it meant nothing.

9 Q What else did you receive?

10 A I -- I didn't receive anything.

11 Q Okay.

12 THE COURT: Can I interject a question --

13 MR. KIZNER: Sure.

14 THE COURT: -- just so we can keep it moving?

15 MR. KIZNER: Yeah.

16 THE COURT: There was some discussion during the
17 opening statements about some kind of a five-year injunction.
18 Is there some kind of a five-year injunction as part of the
19 deal?

20 THE WITNESS: That's what I was just -- yes, but
21 no. So I was just answering, they objected to that.

22 THE COURT: So that October to October was the five
23 years?

24 THE WITNESS: The -- the October to October was
25 some -- that injunction that, because of timing, meant

1 nothing, because of the holidays. The five-year -- let me --

2 THE COURT: Isn't October to October a whole year?

3 So, if it's for five years --

4 THE WITNESS: Because of the holiday, because 70
5 percent of the business of fig spread is in the holidays,
6 it's meaningless.

7 THE COURT: So which months are not subject to the
8 injunction?

9 THE WITNESS: So what that means is they supplied
10 their -- when you're in supply, you're not actually producing
11 during those months of October -- it gave him time,
12 basically, to -- I'm in production, I've been in it for
13 years. When you are supplying for the holiday, you make
14 product before October and you give it to your customers, or
15 you make it in October and you give it to your customers.
16 You're not delivering it November, December. So, basically,
17 it gave him --

18 THE COURT: I guess what I'm not understanding --

19 THE WITNESS: Yes.

20 THE COURT: -- is, if you say that the duration of
21 an injunction is from October to the next October --

22 THE WITNESS: Right.

23 THE COURT: -- that seems to include the holiday
24 season.

25 THE WITNESS: It --

1 THE COURT: So how does it not include the holiday
2 season?

3 THE WITNESS: I know, I get it. It -- you have to
4 know the business. Basically, when you're stocking up your
5 customers for the holiday, you stock them at different times
6 than they're selling. So you can stock them at any window
7 between September to mid-November, and they're still going to
8 be stocked, there's a big window, but you got to stock them.
9 So he had plenty of time to do that both years. He did not
10 miss his holiday season, which is 70 percent of his business.

11 And that's -- that's what I'm trying to say.
12 That's why it's meaningless. The point of an injunction is
13 so I don't have competition because that's what he promised
14 me in my contract, he wasn't supposed to have --

15 THE COURT: So your perception of the effect of the
16 injunction is that it --

17 THE WITNESS: Yeah.

18 THE COURT: -- left open a number of months close
19 enough in time to the holiday season --

20 THE WITNESS: Right.

21 THE COURT: -- so that the debtor could supply the
22 suppliers.

23 THE WITNESS: Correct. And I knew that at the
24 time, and so did he. That's not -- it was a non-thing. But
25 again --

1 THE COURT: But you accepted that.

2 THE WITNESS: I did --

3 THE COURT: Okay.

4 THE WITNESS: -- because the money was everything
5 to me.

6 THE COURT: Okay.

7 THE WITNESS: Yes, that's correct.

8 THE COURT: Okay.

9 THE WITNESS: And then to the five-year question,
10 would you like me to just say -- explain that quickly?

11 THE COURT: Yes.

12 THE WITNESS: So the five-year, that's a non-thing,
13 too. That's something Judge Smith really wanted to put in
14 there.

15 THE COURT: That's something different than the
16 injunction you were just telling me about.

17 THE WITNESS: Correct, correct.

18 THE COURT: So tell me about the five-year
19 injunction.

20 THE WITNESS: So they're calling it an
21 "injunction;" I'm calling it a "nothing" because it basically
22 says they can't use my trade secrets for five years. Okay.
23 Well, they can never use my trade secrets, it's against the
24 law. If they do, I'm going to sue them again. So here we
25 are.

1 THE COURT: Okay.

2 THE WITNESS: It's a non-thing.

3 THE COURT: Got it.

4 THE WITNESS: Okay. Great.

5 THE COURT: Thank you.

6 THE WITNESS: You're welcome.

7 BY MR. KIZNER:

8 Q Okay. You said a second ago it's all about the money,
9 but you never received any of that money.

10 A Correct.

11 Q When this was entered into, the typed agreement and the
12 handwritten agreement, was there ever -- did you ever believe
13 that you'd be treated differently?

14 A Differently than other -- the other unsecured creditors?

15 Q What was your belief how you'd be treated?

16 MR. GEORGE: Your Honor, I object.

17 A Like everyone.

18 MR. GEORGE: I object.

19 A Like --

20 MR. GEORGE: What her -- what she believed was
21 irrelevant. We're focusing on what was happening at that
22 settlement agreement and what the discussions were at that
23 time. What she thought or didn't think doesn't matter at
24 all. It's what was expressed in there at the mediation or in
25 this agreement, as to what the intentions were.

1 THE COURT: Do you have a response to that?

2 MR. KIZNER: Yeah, Your Honor. There is no -- one
3 of the ways you can speak about -- get parol evidence in,
4 extrinsic evidence, is when there's just a lack of terms.
5 There's a material term missing in this, which is dealing
6 with any kind of classification into separate plans treating
7 -- there's -- one, we're an unsecured creditor. So I think
8 it's important to focus on that. It says "unsecured
9 creditor," that's the only time there's a creditor mentioned,
10 in terms of a creditor class or a potential class for the
11 plan. So I think what was not in there is important to point
12 out.

13 THE COURT: But what -- isn't the timing important?
14 Doesn't it matter what the negotiating parties' state of mind
15 and actual conduct during the negotiations, isn't that really
16 what --

17 MR. KIZNER: Well --

18 THE COURT: -- I need to hear about? Not a general
19 question about --

20 MR. KIZNER: Sure.

21 THE COURT: -- she now understands these things to
22 mean?

23 BY MR. KIZNER:

24 Q Okay. So did you --

25 THE COURT: So let me --

1 MR. KIZNER: Let me rephrase it to --

2 THE COURT: -- sustain -- I'll sustain the
3 objection to that question. You can try again.

4 THE WITNESS: Uh-huh.

5 MR. KIZNER: Okay.

6 BY MR. KIZNER:

7 Q Did you have any belief during the settlement
8 discussions, when these documents were drafted during the
9 conference, about how you'd be treated compared to other
10 unsecured creditors?

11 A Well, let me just say I did not really know much about
12 bankruptcy. I understood basic terms. You had secured
13 creditors like banks, and then you had unsecured creditors
14 like me. I knew I was the largest unsecured creditor.
15 That's pretty much it. I was in a group of unsecured people.

16 THE COURT: The way you're phrasing that, I'm
17 taking that as the answer to his question is no.

18 THE WITNESS: Okay. Sorry. I digressed and --
19 sorry. What --

20 THE COURT: And I don't want to put words in your
21 mouth, but that's what I -- I'm hearing you, so I want to
22 give you the chance to explain that.

23 THE WITNESS: Can I ask him -- I need the question
24 again.

25 THE COURT: Do you want to -- ask the question

1 again.

2 THE WITNESS: Can you just repeat that? I'm sorry.

3 MR. KIZNER: Sure.

4 BY MR. KIZNER:

5 Q At the time the settlement discussions were taking place

6 --

7 A Yeah.

8 Q -- and during the settlement agreement -- when the
9 settlement agreements were drafted --

10 A Right.

11 Q Did you believe you'd be paid different or treated
12 differently than other unsecured creditors?

13 MR. MASCHMEYER: That wasn't the question --

14 A No, the same.

15 MR. MASCHMEYER: -- he asked the first time.

16 THE COURT: I think the -- let me rephrase it. I
17 think the point of the question was: Did you have any
18 expectations that your treatment would be the same as other
19 unsecured creditors in the bankruptcy case?

20 MR. GEORGE: And Your Honor --

21 THE COURT: Basically, what you're saying is you
22 weren't thinking about bankruptcy, so, to me, the short
23 answer is no. But if you think that's not a fair
24 characterization, tell me.

25 THE WITNESS: I'm so sorry, I'm just not

1 understanding. So I saw myself as --

2 THE COURT: Were you --

3 THE WITNESS: -- an unsecured creditor.

4 THE COURT: Were you even thinking about the other
5 creditors?

6 THE WITNESS: I was. I was very aware of
7 creditors, that there were secured and unsecured, and that's
8 it.

9 THE COURT: But that's it.

10 THE WITNESS: Pretty much, secured and unsecured,
11 and that's what I understood. Secured were bank; unsecured
12 were people like me.

13 THE COURT: Okay.

14 THE WITNESS: I was an unsecured.

15 BY MR. KIZNER:

16 Q So there was no thought about different classes of
17 unsecured creditors or even --

18 A Those two classes were different in my mind, from
19 secured --

20 Q Okay.

21 A -- to unsecured.

22 Q Okay.

23 A I didn't think I'd be a third-class --

24 MR. GEORGE: Your Honor --

25 A -- citizen.

1 MR. GEORGE: -- object.

2 Q Did you agree --

3 A Overruled.

4 Q Did you agree to simply accept ten percent -- only ten
5 percent?

6 A Absolutely not.

7 Q Okay. And what does the settlement agreement say?

8 MR. GEORGE: Your Honor I'm going to move to strike
9 that.

10 THE COURT: So what are you moving to strike,
11 exactly?

12 MR. GEORGE: Because it's not responsive. Did she
13 agree to accept ten percent? There's a document that says --

14 THE COURT: Well, she didn't answer yet. Are you
15 striking --

16 MR. GEORGE: Well, she did.

17 THE COURT: -- the question?

18 MR. GEORGE: She --

19 THE COURT: Well, she said absolutely not.

20 MR. GEORGE: Yeah, and there's a document that says
21 that they'll accept ten percent, if they get at least ten
22 percent --

23 THE WITNESS: No.

24 MR. GEORGE: -- they'll accept. So she's saying,
25 even though I signed the agreement that says --

1 THE COURT: All right.

2 MR. GEORGE: -- I'll take --

3 THE COURT: I'm not --

4 MR. GEORGE: -- ten percent --

5 THE COURT: I'm not --

6 MR. GEORGE: -- and even though money was

7 everything --

8 THE COURT: I understand. I'm not going to strike
9 it. You can deal with it in other ways.

10 BY MR. KIZNER:

11 Q Okay. So is it fair to say you agreed to receive at
12 least ten percent?

13 A I agreed to receive what other unsecured creditors would
14 agree to receive. And in the worst-case scenario -- this was
15 written in at the end. It was like if this is all Lancaster
16 can pay out to you guys and to the creditors -- and that's
17 what I mean, "you guys," to the creditors, pay out -- that's
18 what "pay out" means, paying out to the -- to the creditors.
19 If this is all Lancaster can afford, I'm not going to cause
20 any trouble, I'm not going to object, I'm not going to stop a
21 plan if that's all he can afford. And that's what I --
22 that's what I did. I wasn't agreeing to only take ten
23 percent. Why would I do that?

24 Q And --

25 A I needed the money.

1 Q And also, it doesn't say only ten percent, right? It's
2 a floor of ten percent, not a ceiling.

3 A It's worst-case scenario, it's a worst-case scenario.
4 It was written in at the very end. It's very vague. The
5 real -- I'm surprised we're even here discussing this. I'm
6 so like insulted about this. I can't even believe we're
7 wasting time on this. This is insulting, really.

8 Q Okay. Just, consistent with your belief as to how you
9 would be treated, which was fairly with other unsecured
10 creditor --

11 A Yes, just like --

12 Q -- what happened --

13 A -- the other ones.

14 Q -- what happened in the first -- are you familiar with
15 the first three versions of the plan that were filed?

16 A I am familiar; I am, somewhat. I know that I was
17 treated the same, I was just treated fairly like --

18 THE COURT: Do we need --

19 A -- everyone else.

20 THE COURT: -- to go through that with this
21 witness? Aren't those facts that are just not dispute?

22 MR. KIZNER: I think it supports --

23 THE COURT: What are --

24 MR. KIZNER: We can --

25 THE COURT: What are you going to do with this?

1 MR. KIZNER: I --

2 THE COURT: Where's it going to go?

3 MR. KIZNER: I think it shows -- it's
4 circumstantial evidence of what the beliefs of the parties
5 were.

6 THE COURT: Who cares what anybody thought about
7 two, three months later, right?

8 MR. KIZNER: Well --

9 THE COURT: If the question is, objectively, is it
10 fair and equitable, and to the extent that that determination
11 requires some assessment of the settlement agreement --

12 MR. KIZNER: Okay.

13 THE COURT: -- you have now moved beyond the
14 settlement agreement.

15 MR. KIZNER: I can deal with that on cross-
16 examination, Your Honor, of Thompson.

17 THE COURT: Well, all I'm saying is that, to walk
18 this witness through the scenario of how there were multiple
19 plans and what each plan did is unnecessary. Those facts are
20 already established.

21 THE WITNESS: Uh-huh.

22 THE COURT: Unless you want to do something else
23 with it.

24 MR. KIZNER: No, no, that's fine. I can deal with
25 it at closing, Your Honor, too.

1 (Pause in proceedings)

2 THE COURT: Do you need some water? There's some
3 water up there, if you want.

4 THE WITNESS: Thank you. I'll wait. Thank you.

5 THE COURT: Okay.

6 (Pause in proceedings)

7 BY MR. KIZNER:

8 Q What do you feel like you're entitled to from the Court?

9 MR. GEORGE: Objection, Your Honor.

10 THE COURT: Sustained.

11 MR. GEORGE: What's the relevance of that?

12 THE COURT: Sustained.

13 BY MR. KIZNER:

14 Q You just want to be treated fairly. Isn't that
15 accurate?

16 A That's it.

17 MR. GEORGE: Leading.

18 A Just like everyone else.

19 Q You tried to become a member of the unsecured creditors'
20 committee, correct?

21 A I did. I was --

22 MR. GEORGE: Objection.

23 A I was blocked.

24 Q Okay.

25 A And it's kind of confusing to me how --

1 MR. GEORGE: Your Honor --

2 A -- counsel -- counsel is sitting --

3 MR. GEORGE: -- she's going to start a narrative
4 that's really unnecessary.

5 THE COURT: I agree.

6 THE WITNESS: Okay.

7 THE COURT: Why don't you wait for the next
8 question.

9 MR. KIZNER: Okay. That's all I have at this time,
10 Your Honor.

11 THE COURT: Okay. Thank you.

12 THE WITNESS: Okay.

13 THE COURT: You were up there a while. Do you want
14 a break before cross-examination, or are you able to keep
15 going?

16 THE WITNESS: I'm okay, unless somebody else wants
17 a break.

18 THE COURT: Okay. Anybody else need a break?

19 MR. GEORGE: Your Honor, I could use five minutes.

20 THE WITNESS: Okay.

21 THE COURT: That sometimes happens. All right.

22 We'll take a five-minute break. During the break, you can't
23 discuss your testimony with your counsel.

24 THE WITNESS: Understood.

25 THE COURT: Okay.

1 THE WITNESS: Thank you.

2 (Recess taken at 10:53 a.m.)

3 (Proceedings resume at 11:10 a.m.)

4 (Call to order of the Court)

5 (Witness resumes stand)

6 THE COURT: Okay. We're ready to resume with
7 cross-examination of Ms. Magee. Who would like to go first?

8 MR. GEORGE: I'll go first, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. GEORGE:

11 Q Ms. Maia, my name is Ed George, I'm the attorney for the
12 creditors' committee, and I have some questions for you about
13 this document and your relationship with Dalmatia.

14 You said your partner is named Dev [sic]?

15 A He's from Croatia; his name is Neb.

16 Q Oh, Neb.

17 A Yes.

18 Q Is he your ex-husband?

19 A He is.

20 Q Are you aware that he was communicating with the debtor
21 by emails, indicating that there was nothing wrong with the
22 fig spread that was produced by the debtor?

23 MR. KIZNER: Objection, Your Honor. What's the
24 relevancy of any of this?

25 THE COURT: Let me --

1 MR. GEORGE: Well, that these claims were --

2 THE COURT: Wait, wait, wait, wait. I didn't hear
3 the objection.

4 MR. KIZNER: What's the relevancy of communications
5 with -- about the fig spread product that -- they objected to
6 anything about the trial coming in. I just -- that's even
7 more unrelated.

8 THE COURT: Yeah, except you got it in, right?

9 MR. GEORGE: Right.

10 THE COURT: So I'll allow it. I'm not sure. Yours
11 was relevant. But if yours got in, I'm going to let him get
12 his in.

13 BY MR. GEORGE:

14 Q Are you aware of that, ma'am?

15 A No.

16 Q Okay.

17 A But I'm -- I am aware that he -- he thought that. We
18 had disagreements, and that's why I'm the president because I
19 make the final call on that.

20 Q So there wasn't agreement between you and your husband
21 that the product was even defective.

22 A We're friends now, we're -- we're very good friends, but
23 --

24 Q But that wasn't the question.

25 A -- but we're not married. But you said "husband," and

1 I'm just correcting you.

2 Q So can you answer the question?

3 A I'm sorry. What's the question.

4 Q The question was: There was not an agreement between
5 you and your partners -- which I think is actually your co-
6 shareholders in your corporation -- as to whether the product
7 was defective.

8 A So you're asking whether there was a question as to
9 whether it was defective? There was a question, a big
10 question. It was defective.

11 Q No, you're not listening, ma'am. I want you to listen
12 to the question.

13 A I'm sorry.

14 Q Is it --

15 A Please rephrase it.

16 Q Well, I'll ask it again. Isn't it true that there
17 wasn't an agreement between you and Neb as to whether the
18 product that the debtor produced was, in fact, defective?

19 A I would phrase it differently than that. I would say
20 that's not accurate, what you said.

21 Q How would you phrase it?

22 A He thought that, even though it had problems, we
23 shouldn't risk shorting customers. He was -- he thought that
24 we should compromise our quality a little bit, and I
25 disagreed.

1 Q I see.

2 So who owns the company?

3 A We are joint shareholders.

4 Q Fifty/fifty.

5 A Correct.

6 Q Now you had counsel during this settlement negotiation,
7 right? The one that happened in District Court.

8 A Yes.

9 Q And do you feel that your lawyers did a bad job for you
10 in negotiating that agreement in District Court?

11 MR. KIZNER: Objection. What -- Your Honor, what's
12 the relevancy of how she felt --

13 MR. GEORGE: Well --

14 MR. KIZNER: -- without her lawyers.

15 MR. GEORGE: Judge, all she's done is grouse about
16 what a terrible deal this was, and I'm asking her does she
17 think her lawyers did a good a job. I think that's a fair
18 question.

19 THE COURT: Overruled. I'll let her answer it.

20 THE WITNESS: So what's the question, did I --

21 BY MR. GEORGE:

22 Q Do you feel like your lawyers did a bad job in cutting
23 this deal for you in District Court?

24 A That is not what I was saying.

25 Q Okay. And you said that you felt that the deal you made

1 in District Court was a terrible deal, right?

2 A That is not what I said, sir.

3 Q You said that you thought it wasn't a good deal for you.

4 A That is not what I said, either.

5 Q You said --

6 A There were many things said, and you're sort of changing
7 it a little, sir.

8 Q Okay. So was that settlement in District Court good for
9 Dalmatia?

10 A If I had been paid the money, and if I was treated
11 fairly, yes.

12 Q Well, when you say "paid the money," what money are you
13 talking about the, ten percent dividend or the money you were
14 supposed to get from Mr. Thompson?

15 MR. KIZNER: Objection to form. It's a compound
16 question.

17 THE COURT: Overruled.

18 MR. GEORGE: No, it's not a compound question.

19 THE COURT: Overruled.

20 THE WITNESS: So you're mischaracterizing the cause
21 and you have been all morning, so I'm going to correct you.
22 I didn't agree to take ten percent, that's false.

23 BY MR. GEORGE:

24 Q Okay. So I'm not --

25 A What is the --

1 Q -- asking --

2 A -- second part --

3 Q -- about --

4 A -- of the question, please?

5 Q Ma'am, I'm not asking about whether you agreed to take
6 the ten percent, I'm talking about what's in the agreement.
7 What money are you saying that you were expecting to receive,
8 the dividend, whatever percentage that was, or the money from
9 Mr. Thompson?

10 A I'm sorry. You know, I really feel like -- I feel very
11 kind of attacked her. I'd like just -- can you just sort of
12 --

13 THE COURT: All right. Let's all take a deep
14 breath. It's natural to feel attacked when you're being
15 cross-examined. So I think the way we should handle this is
16 everybody slow down. Mr. George, ask your questions a little
17 more slowly. Listen to them --

18 THE WITNESS: Okay.

19 THE COURT: -- and then try to answer very
20 specifically what he's asking for --

21 THE WITNESS: Okay.

22 THE COURT: -- in whatever way you think is
23 accurate.

24 THE WITNESS: Okay.

25 THE COURT: And let's just sort of reboot and start

1 again.

2 THE WITNESS: Okay.

3 THE COURT: So, Mr. George, why don't you ask her
4 your question.

5 THE WITNESS: Okay.

6 BY MR. GEORGE:

7 Q I think your testimony was that you thought it would
8 have been a good deal if you would have gotten your money.
9 And I'm -- if I'm misquoting you --

10 A Yes.

11 Q -- in saying that, I apologize. But my followup --

12 A Okay.

13 Q -- question was: When you say "the money" or your
14 money, do you mean the dividend or the money that was
15 promised by Mr. Thompson to be paid to liquidate that
16 injunction that was granted?

17 A So you're -- you're putting so many things in the
18 question that are just -- I'm going to tell you what I was
19 referring to when I said "the money" because what you said is
20 not right. What I -- what I refer to when I say "the money"
21 is what I was supposed to get: My unsecured claim in
22 bankruptcy --

23 Q Okay.

24 A -- and my -- what I said then, my boatload of cash,
25 which I never got. So those -- that's "the money."

1 Q But that boatload of cash was not supposed to come from
2 the debtor, it was supposed to come from Mr. Thompson, right?

3 A I -- I don't think it was ever specified --

4 Q Well, does --

5 A -- how he was --

6 Q -- it say that --

7 A -- going to give to me, honestly. He has many
8 companies. I don't know. They're all sister companies, he
9 reworks things. I don't know.

10 Q I'm talking about the agreement, ma'am. It says:

11 "Upon payment of the sum of" blank "to plaintiffs,
12 the injunctions will be terminated, the claim in
13 bankruptcy will be assigned to Mr. Thompson or his
14 designee, and the judgment against CO Nolt will be
15 stricken, and judgment against Mr. Thompson shall
16 be stricken or vacated."

17 My question to you is: When you negotiated that
18 provision, your understanding was that Mr. Thompson was going
19 to pay \$700,000 to get out from under that injunction and get
20 that judgment released against him, isn't it?

21 A My understanding to the first part of that was that Mr.
22 Thompson -- or somehow he would come up with the money. I
23 think he said he was going to borrow it from his mom. I
24 don't know.

25 Q And if he didn't come up with that money, what happened

1 to the injunctions, based on your understanding of this
2 agreement?

3 A Again, the injunction was for a year. He wouldn't go
4 longer. We all know why. I think I explained it because it
5 -- it would have held him up at -- during holiday sales, so
6 that's a non-thing that I -- that was in there. What was the
7 other part of that?

8 Q Did you ever object to the provision allowing for him to
9 provide a truckload of fig spread to FOODMatch?

10 A That was one of the things he asked us for, that's what
11 -- that's one of the carveouts that I was trying to explain -
12 -

13 Q And --

14 A -- which I think I did explain, where he wanted to
15 deliver 40,000 jars to my biggest competitor, the one who
16 stole the recipe with him, and we agreed.

17 Q Did you feel you didn't have a choice to accept this
18 settlement agreement that the Judge was proposing or
19 mediating?

20 A I wouldn't put it that way.

21 Q Okay.

22 A I -- I wouldn't put it exactly that way. I wanted to
23 cooperate with Judge Smith.

24 Q Right.

25 There was a judgment against you entered, wasn't there?

1 A I hired a private investigator who hired another --

2 MR. GEORGE: Your Honor --

3 A -- private investigator.

4 MR. GEORGE: -- can we have her answer the
5 question?

6 THE COURT: Yeah, he --

7 THE WITNESS: Oh, I'm sorry.

8 THE COURT: -- didn't ask you what the background
9 was; he just asked a very simple question.

10 THE WITNESS: Was --

11 THE COURT: Was there a judgment entered against
12 you?

13 THE WITNESS: Personally, yeah, for the
14 investigations.

15 BY MR. GEORGE:

16 Q Well, it wasn't an investigation; it was commercial
17 espionage. You went into the debtor's property without
18 permission --

19 A No, that's --

20 Q -- and started --

21 A -- false.

22 Q -- surveilling --

23 MR. KIZNER: Objection, Your Honor.

24 Q -- didn't you?

25 A No, that's false. That's false.

1 Q So that judgment that was entered against you, that was
2 for something you didn't do.

3 A That's correct.

4 Q Oh, okay.

5 And how much was the amount of that judgment?

6 A Zero.

7 Q So a judgment was entered against you in the amount of
8 zero.

9 A Correct.

10 Q Now you also sued FOODMatch, didn't you?

11 A Correct.

12 Q And isn't it true you got several million dollars from
13 FOODMatch?

14 A There was a settlement with FOODMatch that I'm actually
15 not allowed to discuss.

16 Q Well, why is that?

17 A I'm under an obligation, a legal obligation, not to
18 discuss any of the provisions.

19 MR. GEORGE: Well, Your Honor, can we seal this
20 part of the record, if this is a confidential issue. I mean,
21 this goes to -- she's raised what's the consideration and the
22 benefits that she got by virtue of this settlement. I think
23 the fact that she received several million dollars --

24 THE COURT: From a --

25 MR. GEORGE: -- from the --

1 THE COURT: From a collateral --

2 MR. GEORGE: -- other defendant is --

3 THE COURT: -- source, in a separate piece of
4 litigation? No, I'm not going to seal this, and I'm not
5 going to make her tell you the number.

6 MR. GEORGE: No, but Your Honor, what it does is it
7 goes to what the actual claims were that were remaining at
8 the time that they entered into the settlement. She's making
9 this assertion that there were all these monies that were
10 owed, and she didn't get anything out of it. And the fact of
11 the matter is there were a number of defendants who were
12 jointly and severally liable for a number of these claims,
13 and she got millions of dollars for it.

14 THE COURT: Was FOODMatch --

15 MR. KIZNER: Objection --

16 THE COURT: -- a defendant --

17 MR. KIZNER: -- Your Honor.

18 THE COURT: -- in the District Court action that is
19 the subject of the settlement? Oh, so -- you're saying yes.

20 MR. GEORGE: Yes, Judge.

21 THE COURT: Oh, so it wasn't separate litigation;
22 it was part of this litigation.

23 MR. GEORGE: Yes, Judge.

24 THE COURT: It was a separate settlement.

25 MR. GEORGE: Yes, Judge.

1 MR. MASCHMEYER: Just -- Your Honor, if you look at
2 the settlement agreement, they're on there as a defendant,
3 FOODMatch.

4 THE COURT: Where is -- oh, yes, I see it's --

5 MR. MASCHMEYER: See it in --

6 THE COURT: -- in the caption.

7 MR. MASCHMEYER: -- a whereas paragraph.

8 THE COURT: Yes.

9 THE WITNESS: Your Honor, I actually --

10 THE COURT: Wait.

11 THE WITNESS: Okay.

12 THE COURT: Wait a second.

13 THE WITNESS: Sorry.

14 THE COURT: Well, I need to understand a couple of
15 things about the litigation then. At the time of the -- was
16 the settlement with Foot Match before or after the jury
17 verdict? Anybody know? I'm asking counsel.

18 MR. KIZNER: Oh, I'm sorry, Judge.

19 MR. GEORGE: I wouldn't --

20 MR. KIZNER: I thought you --

21 MR. GEORGE: -- know, Judge.

22 MR. KIZNER: -- were asking the witness.

23 MR. GEORGE: I wouldn't know.

24 MR. MASCHMEYER: It was after, I believe, Judge.

25 (Participants confer)

6 MR. GEORGE: As we understand, on many of the
7 claims, it was, not on the claims against her individually,
8 obviously. And there may have been some other ones, but I
9 haven't studied it that closely. But from the --

10 THE COURT: Mr. Kizner --

11 MR. GEORGE: -- debtor we --

12 THE COURT: -- do you know?

13 MR. GEORGE: -- understand that?

14 MR. KIZNER: I was not counsel, but -- at that

15 time, but I believe there was a separate judgment, right?

16 That was entered against FOODMatch and the debtor. Ms. Magee
17 should know, and maybe I -- maybe she knows.

18 MR. GEORGE: Well, it may be a --

21 Implicit in your request, Mr. George, is your
22 assumption that a party that may be under a confidentiality
23 obligation from a settlement does not breach that if the
24 disclosure is made in a core proceeding, at least if the core
25 proceeding is sealed. Are you sure that that's the law? Is

1 that correct?

2 MR. GEORGE: I don't -- I'm not going to say that I
3 have researched that issue, Judge.

4 THE COURT: Yeah.

5 MR. GEORGE: But I think that -- I think that that
6 makes sense, and particularly if you seal it. I mean, if she
7 were served with a subpoena, I would imagine that there's a
8 provision that says that she'd have to testify about it.

9 THE WITNESS: I have a solution.

10 MR. GEORGE: And I haven't seen --

11 THE COURT: Am I correct that the --

12 THE WITNESS: I have a solution.

13 THE COURT: -- that the -- I'll hear that in one
14 second, but let me just ask this question, first.

15 THE WITNESS: Sure.

16 THE COURT: The aspect of the settlement with
17 FOODMatch that you're concerned is confidential is not that
18 there was a settlement --

19 THE WITNESS: Correct.

20 THE COURT: -- but the dollar amount. That's the
21 key --

22 THE WITNESS: That's correct.

23 THE COURT: -- fact.

24 THE WITNESS: That's correct. I still have a
25 solution.

1 THE COURT: What is your suggested solution?

2 THE WITNESS: I could actually -- I can -- what is
3 my exact solution? I can't divulge that number, but I can
4 answer to his question, I can address that. I can just say -
5 - can I -- I'll just tell you. This number, this 1.7 has
6 nothing to do with FOODMatch. Basically, this is only
7 Lancaster. That's what left after things with FOODMatch got
8 dealt with.

11 THE WITNESS: Yeah.

14 BY MR. GEORGE:

15 Q How much was the total judgment against the debtor and
16 FOODMatch?

17 A You know, they were trebling things, and I don't think I
18 can do the math like -- I don't know exactly --

20 A -- the exact --

21 0 -- more than --

22 A -- dollar amount.

23 Q -- 5 million?

24 || A But --

25 Q Ma'am, was it more than 5 million?

1 A I think it might have been kind of close to that.

2 Q Okay.

3 A But this amount, the 1.7 in the bankruptcy, is only
4 Lancaster.

5 Q Okay. So it's net of the amounts that you received from
6 FOODMatch.

7 MR. KIZNER: Objection. That's --

8 A I don't --

9 MR. KIZNER: -- not what --

10 A -- understand --

11 MR. KIZNER: -- she said.

12 A -- that question. But I -- I think I answered, right?
13 The --

14 THE COURT: Yeah, I think, given the
15 confidentiality --

16 MR. GEORGE: I think so.

17 THE COURT: -- concerns, I think we've gone as far
18 with this as we can.

19 BY MR. GEORGE:

20 Q Now, Ms. Maia, you never mentioned to the Judge the
21 ongoing five-year injunction --

22 THE COURT: She mentioned it.

23 Q -- that's still in place with respect to the debtor.
24 There is a five-year injunction, isn't there?

25 A No.

1 Q So the language that says:

2 "Commencing at 5:01 p.m. on October 13, 2018, and
3 continuing for a period of five years, Lancaster
4 Fine Foods shall be enjoined from selling fig
5 spread containing" --

6 I assume your --

7 A Trade secrets.

8 Q -- formula.

9 " -- or using the same percentage of sugar and fig
10 as used by Dalmatia."

11 You don't consider that an injunction?

12 A No, that's -- that's law. He can't use my trade
13 secrets, period.

14 Q Oh. So what --

15 A The Judge --

16 Q -- happens --

17 A -- wanted to --

18 Q -- after --

19 A -- reinforce it.

20 Q So, under your understanding, what happens after five
21 years? He still can't use those ingredients.

22 A Correct.

23 Q So that's --

24 A I brought this up --

25 Q -- a permanent --

1 A -- with the Judge.

2 Q So that's -- so your view is that there's either an
3 agreement or the law that means that there's a permanent bar
4 from them ever producing your product?

5 A Sir, in trade secret law, you cannot use someone's --
6 you cannot use someone's trade secrets, legally. You are not
7 allowed to.

8 MR. MASCHMEYER: Objection, Judge, only that --

9 A We just --

10 MR. MASCHMEYER: She's giving a legal opinion now
11 as to what trademark law is.

12 THE COURT: Sustained.

13 THE WITNESS: It's not trademark. It's --

14 THE COURT: Sustained.

15 MR. MASCHMEYER: Or -- I'm sorry.

16 THE WITNESS: It's trade secret.

17 MR. MASCHMEYER: (Indiscernible)

18 THE COURT: Let's stop at this point. Let's move
19 on to another subject.

20 MR. GEORGE: Understood, Judge.

21 BY MR. GEORGE:

22 Q So you mentioned that this ten percent came up at the
23 very end of the negotiations. Who asked for those
24 negotiations to start?

25 A It wasn't even a negotiation; it was an afterthought and

1 it was put in there. That's why it's in the margins, in
2 tiny, little writing.

3 Q Understood. I'm asking who raised it?

4 A It was either the Judge himself, Judge Smith, or -- you
5 know, wanting to maybe be fair in a worst-case scenario with
6 Lancaster.

7 MR. GEORGE: Your Honor, I don't need the narrative
8 about what the Judge may have been thinking.

9 BY MR. GEORGE:

10 Q I'm asking: Do you remember, during the settlement
11 provisions, who raised the issue of paying ten percent to
12 Dalmatia?

13 A It was the -- that wasn't -- that's not what's in there.
14 It doesn't say to pay ten percent to Dalmatia.

15 Q Who mentioned --

16 A You keep doing --

17 MR. KIZNER: Objection --

18 A You keep --

19 MR. KIZNER: -- Your Honor.

20 A -- saying it wrong.

21 MR. KIZNER: She already said --

22 MR. GEORGE: I'm going to -- I'm trying to
23 rephrase.

24 MR. KIZNER: She already said she doesn't know, she
25 said that already.

1 MR. GEORGE: No, that's not what she said.

2 MR. KIZNER: She's not sure who it was.

3 MR. GEORGE: That's not --

4 MR. KIZNER: I mean that's --

5 MR. GEORGE: Judge --

6 MR. KIZNER: That's the answer.

7 MR. GEORGE: -- is this cross-examination or not?

8 THE COURT: I'm going to let him see if he can
9 refresh the witness' recollection by the way he asks the
10 questions. So go ahead, try again.

11 THE WITNESS: Yeah, try again, please.

12 BY MR. GEORGE:

13 Q During the settlement negotiations, who began the
14 discussion of a potential dividend to Dalmatia out of the
15 bankruptcy case.

16 A Dividends. I don't know the implications of the words
17 you're using, but --

18 Q The amount that you would be distributed out of the
19 bankruptcy case. We call it a "dividend" in a lot of
20 circumstances.

21 A That's not what this is. That's not -- that was never
22 discussed. This was a worst-case scenario. If the plan
23 could only pay out ten percent --

24 THE COURT: And you're fighting the wrong issue.
25 All he wants to know is --

1 THE WITNESS: Yes.

2 THE COURT: -- who initiated the discussion --

3 THE WITNESS: Yes.

4 THE COURT: -- that led to this handwritten
5 interlineation at the very end that you put in? Who started
6 the discussion that resulted in that.

7 THE WITNESS: Right.

8 THE COURT: That's all he wants to know.

9 THE WITNESS: I can't remember.

10 THE COURT: She --

11 THE WITNESS: I can't remember.

12 THE COURT: Okay.

13 BY MR. GEORGE:

14 Q Did you ever, during the discussions, ask the debtor
15 about what their ability to produce revenue would be, not
16 using any of your formulas to create fig spread?

17 A I'm sorry. Can you repeat the question, please?

18 Q Did you, during the negotiation, get any documents or
19 any kind of projections on what the debtor's ability were --
20 was to produce revenue?

21 A Did I ask to see his -- his figures on what he was doing
22 if he wasn't using my recipe?

23 Q Yes.

24 A No.

25 Q So, under this agreement, you also have the right to

1 continue monitoring of the debtor's operations, right?

2 A Not me, personally.

3 Q Well, it says -- so not you, personally. So when it
4 says "The payment is to be made to Dalmatia or Maia Magee,"
5 who is really supposed to receive the payments?

6 A Well, I footed -- I basically spent -- emptied my bank
7 account and my life savings to pay for the litigation.

8 Q So --

9 A So --

10 Q So, if you get a payment, instead of paying it to the
11 entity that has the claim, you're going to take it,
12 personally.

13 A I'm going to make sure the first thing you do is you pay
14 back your loan. And if I personally make a loan to the
15 company, I'm going to pay my loan back to myself first, so
16 that's pretty logical.

17 Q So did you make a loan to the company to finance --

18 MR. KIZNER: Objection, Your Honor. What is the
19 relevancy of any of this?

20 MR. GEORGE: Well --

21 THE COURT: There's an objection. What's the
22 relevance, Mr. George?

23 MR. GEORGE: Well, Your Honor, I think that there
24 is a question about whether she has the claim or she owns the
25 claim or whether she's posturing herself to receive the

1 payment herself, instead of Dalmatia. I mean, we're talking
2 about -- she's raised the good faith of the parties to these
3 negotiations. And I'm saying this is a party who committed
4 an act of corporate espionage, is misdirecting the revenue to
5 herself. Her own partner didn't agree that there was
6 anything wrong with the product. She's already testified
7 that there was no injunction, but the very language states
8 that there's a five-year injunction. There are plenty of
9 inconsistencies in her testimony --

10 THE COURT: All right.

11 THE WITNESS: Uh-uh.

12 MR. GEORGE: -- and I'm cross --

13 THE COURT: But as to that last question, I'm going
14 to sustain the objection.

15 THE WITNESS: And you're --

16 THE COURT: That --

17 THE WITNESS: -- misstating things, sir.

18 THE COURT: You -- there's nothing for you to
19 respond to yet --

20 THE WITNESS: Okay.

21 THE COURT: -- Ms. Magee.

22 BY MR. GEORGE:

23 Q Do you know whether Stark & Stark are bankruptcy
24 lawyers?

25 A Yes, that's why I hired them.

1 Q So did you recall ever having had a discussion with your
2 lawyers --

3 MR. KIZNER: Objection --

4 Q -- during these --

5 MR. KIZNER: -- Your Honor.

6 Q -- negotiations?

7 MR. KIZNER: This is attorney/client privilege.

8 THE COURT: He -- let him finish -- first of all,
9 let him finish the question. All right? Let me hear what it
10 is that he's asking.

11 Go ahead. Try again, Mr. George.

12 BY MR. GEORGE:

13 Q Did you have any discussions with your attorneys during
14 the settlement agreement in front of the Judge about what
15 this classification claim -- this classification issue --
16 whether there might be a classification issue in any
17 prospective plan filed by the debtor?

18 A Okay. So -- I'm sorry. Repeat that. The --

19 Q Yes. Did you, in the presence of the Judge, discuss
20 with your attorneys at Stark & Stark whether there was any
21 kind of ability of the debtor to classify claims separately?

22 A I did not reach out to Stark & Stark; I did reach out to
23 someone else who's familiar with bankruptcy and --

24 Q What did they tell you?

25 MR. KIZNER: Objection, Your Honor. This is

1 attorney/client privilege.

2 MR. GEORGE: Who says it was an attorney? She
3 didn't say it was an attorney.

4 THE WITNESS: It was an attorney.

5 THE COURT: There's an objection to -- that doesn't
6 mean there was an attorney/client relationship.

7 MR. GEORGE: That's true, too.

8 THE COURT: You --

9 MR. GEORGE: Well, that's what I was going to get
10 to next.

11 THE COURT: So why don't you lay a foundation and
12 I'll --

13 BY MR. GEORGE:

14 Q Did you hire them formally?

15 A Yes.

16 Q Did you have a retention letter?

17 A Yes.

18 Q Did you pay them a retainer?

19 A Yes.

20 Q And they reviewed this from a bankruptcy standpoint?

21 A That's the specialty, yes.

22 Q And can you tell us the name of that firm?

23 A It's Jerry Berkowitz.

24 Q And what's his firm?

25 A Berkowitz Klein, LLP.

1 Q And are they a Pennsylvania firm?

2 A Yes.

3 Q And so you did consult bankruptcy counsel about the
4 individual undertakings in the settlement agreement?

5 A I -- I --

6 THE COURT: Mr. George, can I ask for a time frame
7 for this, to see what --

8 BY MR. GEORGE:

9 Q During the time that you were --

10 THE COURT: Is this --

11 Q -- negotiating --

12 THE COURT: -- happening --

13 Q -- for the resolution.

14 THE COURT: This is happening on the day of the
15 negotiations?

16 MR. GEORGE: I'm --

17 THE COURT: Is that what you're saying?

18 THE WITNESS: Yes, I called him.

19 MR. GEORGE: Okay.

20 THE COURT: Okay.

21 BY MR. GEORGE:

22 Q So what happens under this agreement that you made if
23 the debtor doesn't pay you ten cents?

24 A I never agreed to take ten cents.

25 Q If they don't pay at least ten cents, what happens?

1 A I --

2 Q What are your obligations?

3 A I'm sorry. I don't understand the question.

4 Q The document says that:

5 "Dalmatia shall have the ability to pursue its
6 current claim in Bankruptcy Court, but will support
7 any plan not inconsistent with this agreement, as
8 long as it pays out at least ten percent."

9 Q So my question is: What happens under this agreement to
10 the Dalmatia obligations if the debtor doesn't pay at least
11 ten percent?

12 A So, if -- my understanding is, if the debtor doesn't pay
13 out to the creditors at least ten percent, I would then have
14 a right to say something.

15 Q Well, it says you -- it says that you don't have to
16 support the plan then, right?

17 A Right.

18 Q And did you vote in favor of the plan?

19 A How did we -- this particular plan we're objecting to
20 because -- the other plans we supported because --

21 Q Are you --

22 A -- we were treated fairly --

23 Q Are you --

24 A -- in those --

25 Q -- aware that your company filed a ballot rejecting the

1 plan?

2 A Because that --

3 Q Ma'am, I'm asking a yes-or-no question. Are you aware
4 of whether your --

5 A I am. I am. Because that's not what I agreed to.

6 Q You testified that you went into the settlement
7 agreement saying you were going to either get an injunction
8 or you were going to get money. But you got both, didn't
9 you?

10 A No.

11 Q Okay.

12 A Not in effect.

13 Q And so your complaint isn't that you didn't get what you
14 wanted under the agreement with respect to the injunction, it
15 was that the agreement that you reached with respect to the
16 injunction didn't really serve any benefit to Dalmatia.

17 A The Judge wanted to put some things in there, and I'm
18 not going to tell a judge not to put things in an agreement.

19 MR. GEORGE: Your Honor, can you ask her to answer

20 --

21 THE WITNESS: I --

22 MR. GEORGE: -- the question I asked?

23 THE COURT: Yeah, I think that was non-responsive.

24 Why don't you try again?

25 THE WITNESS: Okay. Thank you. Please, could you

1 please rephrase the question, sir?

2 BY MR. GEORGE:

3 Q Your real complaint about the settlement agreement with
4 respect to the injunction was not that you didn't get it;
5 it's that, once you got it, the terms weren't acceptable to
6 you.

7 A That's -- I have no objection to the settlement
8 agreement.

9 Q Oh, okay.

10 A My objection is -- is that you're misinterpreting it and
11 trying to throw me under the bus.

12 Q Well, ma'am, you spent a lot of time telling the Court
13 that the injunctions didn't mean anything. Did you know that
14 at the time you agreed to them?

15 A Sure. It was a nonissue, it's a non-clause. It was in
16 there --

17 Q It's a non-clause?

18 A Yeah, it's a non-clause. The Judge wanted it in there.
19 I'm not going to tell the Judge not to. The -- the monies --
20 as I've been very consistent saying, the monies are what
21 meant something.

22 Q Now wait a minute, ma'am. You said that, when you went
23 into that meeting, your intention was to get an injunction
24 and money. You didn't say the Judge put that in your head;
25 you said you went into the meeting with that intention. Was

1 that not what you intended to say?

2 A I believe what I said was I needed one or the other, and
3 that's what I said on the spot, too. I really need a real
4 injunction, or I need money.

5 Q And you got an injunction that wasn't real, but you
6 agreed to it anyway.

7 A I let -- allowed it to be in there. It's meaningless.

8 Q And so back to my other question. Did you feel that you
9 couldn't say to the Judge, I'm not accepting this, I'm not
10 settling?

11 A That's correct. I'm not going to argue with a judge.

12 Q Oh, so you felt like you had no choice but to agree with
13 what the Judge was suggesting.

14 A That's not what I said. I'm very respectful. He was
15 there to do a good thing.

16 Q Well --

17 A I wanted to support him. I don't appreciate your
18 attitude.

19 Q Well, it's not about respect, ma'am. It's about someone
20 imposing something on you that you don't feel is appropriate
21 or acceptable to you. And I'm asking you: Did you feel put
22 upon that that settlement was forced upon you by the Judge?

23 A I wouldn't put it that way, no.

24 Q Okay. Who negotiated for the Dalmatia claim to be
25 assigned to Mr. Thompson, who first raised that issue?

1 A At the settlement conference?

2 Q Yes.

3 A That part is kind of hazy. I -- I think that was Mr.
4 Thompson.

5 Q Did he ever tell you why he wanted to do that?

6 A Honestly, I'll tell you straight out, I don't even
7 understand that part, and no.

8 Q Well, but you had a bankruptcy lawyer that you were
9 talking to during that day. Did you ask him about what that
10 meant?

11 A I don't think I did.

12 MR. KIZNER: Objection.

13 A I don't think I ran that by him.

14 MR. KIZNER: Attorney/client --

15 THE WITNESS: Oh.

16 MR. KIZNER: -- privilege.

17 THE WITNESS: Should I not answer that? Okay.

18 BY MR. GEORGE:

19 Q Now you mentioned Dalmatia. Where are its offices?

20 A Technically, we started in Florida, and we technically
21 still have an office there.

22 Q Where are Dalmatia's offices?

23 A Technically, they're still in Florida, though we're, you
24 know, traveling nowadays, but ...

25 Q Well, when you say "still in Florida," do you have an

1 office that says "Dalmatia" on the outside, or is this a home
2 business?

3 A No, no. It's a -- it's in an office building.

4 Q And you don't produce any of this product yourself, do
5 you? In other words, does Dalmatia have its own fig spread
6 production facility that it owns?

7 A We have a sister company, which we owned before hiring
8 Lancaster.

9 Q Well, that's not what I asked you, ma'am. I asked you
10 whether Dalmatia has its own production company.

11 A Dalmatia technically does not.

12 Q And if you had a production company that was a sister
13 company, why did you need Mr. Thompson's company?

14 A I wanted to make product in America, I wanted to stop
15 paying high tariffs, I wanted -- for many reasons. I wanted
16 more turn -- a faster turnaround time.

17 Q So is --

18 A There were --

19 Q Is the sister company in Croatia?

20 A It is.

21 Q Where your ex-husband is from?

22 A He is from there, and I studied there, so ...

23 Q And you what?

24 A I studied music there.

25 Q Oh.

1 A I studied there.

2 Q Wonderful.

3 Prior to running this business, did you have any kind of
4 training or education in the operation of a business?

5 A A little.

6 Q And what kind of business did you operate before
7 Dalmatia?

8 MR. KIZNER: Your Honor, I object. This is --
9 we're so far in left field at this point. I mean, what does
10 this have to do with anything?

11 MR. GEORGE: Well, we're really not, Judge. I --
12 you know, this is a strange discussion, where you have
13 someone sitting on the stand and saying, I agreed to this, I
14 agreed to this, I agreed to this, it was all lousy. And it
15 sounds to me like that's the complaint here, not that the
16 bankruptcy is treating her poorly, that she did a bad deal in
17 Bankruptcy Court. So I've just been trying to understand
18 what's her business background and what's her understanding
19 of how business works. Is this the first business she ever
20 operated? I think that's a relevant question.

21 THE COURT: All right. If you limit it to that,
22 I'll allow it.

23 THE WITNESS: I can clarify more than that. My
24 issue isn't with --

25 BY MR. GEORGE:

1 Q I'm just asking you what you ran before Dalmatia, ma'am.

2 A So I didn't run, I worked for people. I had jobs since

3 --

4 Q Oh.

5 A -- I was like five.

6 Q Okay. So who negotiated for the payment to be made

7 directly to you, Maia Magee?

8 A Well., this is when Mr. Thompson and I walked out of the
9 room and -- and -- well, I thought we -- I thought we had
10 something. We -- we made an agreement out there.

11 Q So you and your husband are 50/50 in this company. Did
12 you both agree to this document?

13 A We're -- I don't know if he actually agreed, but he's
14 fine with me doing it.

15 Q Well, but you're 50/50.

16 MR. KIZNER: Objection, Your Honor. What does this
17 have to do with anything? There's no -- now are they saying
18 that it's not validly signed. I mean, I'm confused. What is
19 it; is it an agency issue --

20 MR. GEORGE: I'm trying --

21 MR. KIZNER: -- he's raising?

22 MR. GEORGE: -- to understand --

23 MR. KIZNER: I don't --

24 MR. GEORGE: -- whether it was validly signed.

25 MR. KIZNER: Well --

1 THE COURT: Is that -- nobody has raised the issue
2 that anybody is seeking to invalidate the agreement as ultra
3 vires in some way. So why are you bringing it up? I'm going
4 to sustain the objection.

5 (Participants confer)

6 BY MR. GEORGE:

7 Q And you said you had pending a motion for a new trial at
8 the time of the settlement, right?

9 A Yes.

10 Q You understand that there's no guarantees in litigation,
11 that you'd have actually won that request for a new trial or
12 the new trial itself, right?

13 A Yes, I understand that.

14 Q Now, at the time that you negotiated this agreement,
15 were you aware that the committee was negotiating with the
16 debtor for a plan of reorganization?

17 A So someone is going to have to refresh my memory of the
18 time line of when that creditor's counsel -- did you -- I'm
19 sorry. Can you rephrase the question, so I'm --

20 Q At the time that you executed this settlement agreement
21 --

22 A Uh-huh.

23 Q -- were you aware that the unsecured creditors'
24 committee had not agreed with the debtor on a plan of
25 reorganization?

1 MR. KIZNER: Objection, Your Honor. It assumes
2 facts that are not in the record. He hasn't laid a
3 foundation for the time even in his --

4 THE COURT: He's asking a question. Nothing you
5 ask in the question is in the record yet. Overruled.

6 MR. GEORGE: Well, it's cross-examination, Your
7 Honor.

8 MR. GEORGE: That's the point, it's cross-
9 examination.

10 THE WITNESS: I don't remember. I don't remember,
11 really.

12 BY MR. GEORGE:

13 Q Well, was that of any interest to you, whether the
14 debtor and the committee had made --

15 A Oh.

16 Q -- its final deal?

17 A I remember this now. Okay. So this was something we
18 discussed, and we -- it was brought up with the Judge, and it
19 was a concern that we -- something like, well, if we even
20 make an agreement here, will it be okay. That was a topic.
21 And I can't remember the resolution to that. Obviously, the
22 Judge felt like it could -- we could still make a settlement
23 agreement.

24 Q Well, did you --

25 A I'm not a legal professional.

1 Q That's fine.

2 Did you consider putting something in the document, or
3 did the lawyers at the meeting suggest something being put in
4 a document, in the event that this was something that either
5 didn't get approved or wasn't accepted?

6 MR. KIZNER: Objection --

7 A I don't know --

8 MR. KIZNER: -- to the extent --

9 A -- what they --

10 MR. KIZNER: -- it seeks --

11 A -- thought about.

12 MR. KIZNER: -- attorney/client privilege. He's
13 asking about --

14 THE COURT: It's not an --

15 MR. GEORGE: I didn't --

16 THE COURT: -- attorney/client privilege if he's
17 asking a question about the discussions --

18 MR. GEORGE: At the meeting.

19 THE COURT: -- that were taking place at this
20 meeting --

21 MR. GEORGE: With her -- between her and her
22 lawyer.

23 THE COURT: -- about the formation of the contract,
24 so it's overruled. It's -- she's not asking about a direct
25 attorney/client communication between her and her own lawyer.

1 He's asking about the discussions among the parties; that's
2 the focus of the questions.

3 So, with that in mind, did anybody bring up the
4 subject of what might happen if the agreement was not
5 approved by the Bankruptcy Court? Do you recall that?

6 THE WITNESS: That came up.

7 THE COURT: Okay.

8 THE WITNESS: And I don't know how it resolved. It
9 came up.

10 BY MR. GEORGE:

11 Q Okay. Now at -- did CO Nolt have a judgment entered
12 against it when the verdict came down in the trial that was
13 conducted in front of Judge Smith?

14 A I think we have judgments against CO Nolt, Lancaster
15 Fine Foods, that little group of his companies. CO Nolt was
16 one of them.

17 Q And how much was CO Nolt liable for?

18 A I would have to look, and I don't know off the top of my
19 head.

20 Q Have you settled with C and L -- CO Nolt?

21 A No, that's -- that's Thompson, Mr. Thompson's company.

22 Q Are you aware of whether --

23 A I mean --

24 Q -- Mr. Thompson still --

25 A Wait. Let me rephrase. If it's -- if it's included in

1 this grouping here -- I'm not sure I understand your
2 question. Do you mean outside of this did I settle?

3 Q Well, I just -- if you look at this document, it says:

4 "Dalmatia shall have judgment entered against CO
5 Nolt as requested in its filings."

6 So that seems to mean, to me, that maybe a judgment
7 wasn't entered, and maybe it was judgment was entered as a
8 consequence of entering into this agreement. I'm asking you
9 if you have a recollection.

10 A Not about that. Sorry. Maybe it will come to me.

11 Q Has the judgment against you been satisfied or marked
12 satisfied?

13 A Where I hired the investigator, that one? That -- yeah,
14 that was no money, though. That was not a --

15 Q Has the debtor, to your knowledge, done anything in
16 violation of the injunction between October 12th, 2017, and
17 October 13th, 2018?

18 A I would have no way of knowledge, really. We checked
19 towards the -- the end of this so-called "injunction."
20 Again, it was a non-injunction. I'm happy to elaborate.

21 (Participants confer)

22 Q Ma'am, if you wanted the same treatments of -- as other
23 unsecured creditors, couldn't you have simply said that you'd
24 support the plan if you were treated the same as all of the
25 other unsecured creditors?

1 A Doesn't it go without saying?

2 Q I'm asking --

3 A This is very --

4 Q -- the questions --

5 A -- generalized.

6 Q -- today, ma'am, unfortunately.

7 A I believe this goes without saying. This was made in
8 good faith, especially --

9 Q Okay.

10 A -- after we came back in the room. You know, Thompson
11 gave me a hug, we were in such -- all a good mood. It went
12 from feeling so tense to feeling kind of peaceful. I mean,
13 it was sort of miraculous. I -- and I remember being very
14 grateful to Judge Smith for seeing it through because he was
15 -- he felt like it could happen, and it did. And I was -- it
16 was a very good feeling. I was -- this was written in good
17 faith.

18 Q So --

19 A We weren't thinking like you are now, so like devious.

20 MR. GEORGE: Your Honor --

21 A It's not -- I'm sorry, but --

22 THE COURT: Well --

23 A -- that's how I --

24 THE COURT: -- I'll let her finish her answer. Go
25 ahead.

1 THE WITNESS: You know, you're trying to twist it
2 and change it, and I don't appreciate it, it's very bad
3 faith. I really don't appreciate this. We drafted this in
4 good faith. We were all in a good mode, we were all trying
5 to make peace. Respect it. I'm asking for fair treatment,
6 nothing else. This is very -- very mean, what you're doing.

7 BY MR. GEORGE:

8 Q So my question to you, ma'am: Is there anything that
9 would have prevented you from including in this document
10 language that insisted you be treated like all other
11 unsecured creditors?

12 MR. KIZNER: Objection, Your Honor. It's totally
13 speculative. It's --

14 THE COURT: Overruled.

15 THE WITNESS: I'm going to need the question
16 rephrased, please, and slower --

17 MR. GEORGE: Can we read --

18 THE WITNESS: -- if you --

19 MR. GEORGE: -- it back?

20 THE WITNESS: -- don't mind.

21 THE COURT: No, because it's not --

22 THE WITNESS: Slower.

23 THE COURT: -- easy to do it. And it would help --
24 Mr. George, I know everybody has their own cadence and pace.
25 Try to slow it down a little bit.

1 BY MR. GEORGE:

2 Q Ma'am, did you consider including in this document a
3 provision that said, for example, that if you weren't treated
4 identically with other unsecured creditors, that you didn't
5 have to settle?

6 A Did I consider putting something else -- again, it was
7 never considered that I wouldn't be treated fairly.

8 Q Okay. But --

9 A This --

10 Q -- I think --

11 A This --

12 Q -- initially, your attorney said it wasn't even
13 discussed, the classification issue inside of the settlement
14 discussions with Judge Smith. Would you agree with that
15 statement that your lawyer said in opening, that the
16 classification issue was never discussed in front of Judge
17 Smith?

18 A I would agree. The only class was secured and
19 unsecured. And of course I'm an unsecured creditor, I'm the
20 biggest unsecured creditor. Why would I be treated
21 differently? I'm asking for fair treatment. I -- I don't
22 understand any of this.

23 Q Did you say you don't understand any of this?

24 A I don't understand why we're here today and why you're
25 doing this to me.

1 Q Well, we're here today on your action, ma'am.

2 A No, we're here because of --

3 THE COURT: All right.

4 A -- your actions, sir.

5 THE COURT: Let's not debate why we're here. We
6 all know why we're here. Let's move to something that
7 relates to --

8 BY MR. GEORGE:

9 Q Has Dalmatia --

10 THE COURT: -- historical evidence.

11 Q -- made any efforts to collect against CO Nolt?

12 A I -- I don't remember the CO Nolt piece, any --

13 Q Has Dalmatia made any effort to collect against Mr.

14 Thompson on the million-two-hundred-thousand-dollar judgment
15 that was entered against him?

16 A I think I wanted -- when I saw that he wasn't going to
17 pay the money, again, I think I called mister -- my lawyer,
18 and we said, why don't we just proceed, he's giving us no
19 choice, and apparently doesn't -- we have no choice. And I
20 was told that all of Thompson's assets are in his wife's name
21 and a joint -- there's some Pennsylvania law --

22 MR. MASCHMEYER: Objection.

23 A -- that protects him.

24 MR. GEORGE: Your Honor --

25 MR. MASCHMEYER: Judge, this is hearsay.

1 MR. KIZNER: They asked --

2 THE WITNESS: No, I mean --

3 MR. KIZNER: -- the question, Your Honor.

4 THE WITNESS: -- it's the law. It --

5 MR. MASCHMEYER: A third party making comments on
6 what Mr. Thompson --

7 THE COURT: You asked what she did; she's telling
8 you what she did and what --

9 MR. GEORGE: Yeah, but that --

10 THE COURT: -- the result of what she --

11 MR. GEORGE: That doesn't --

12 THE COURT: It doesn't --

13 MR. GEORGE: -- allow her to --

14 THE COURT: -- mean it's true.

15 MR. GEORGE: -- say what somebody else said.

16 THE WITNESS: You don't like my answers, I'm sorry.

17 MR. GEORGE: Your Honor --

18 THE WITNESS: His assets --

19 MR. GEORGE: This is an --

20 THE WITNESS: -- are protected.

21 MR. GEORGE: -- evidentiary issue. I don't want to
22 argue with the witness.

23 THE COURT: It's not -- I am not taking it for the
24 truth. I'm taking it for this is what she learned --

25 MR. GEORGE: But she --

1 THE COURT: -- from her --

2 MR. GEORGE: -- didn't say --

3 THE COURT: -- discussion --

4 MR. GEORGE: -- that, Judge.

5 THE COURT: -- and she hasn't taken any action
6 because of that. That's all.

7 THE WITNESS: That's it.

8 BY MR. GEORGE:

9 Q And where did you learn that, ma'am?

10 A Actually, I was told from very many sources the same
11 thing. Pennsylvania has protection laws when you're married,
12 so you can't actually -- all of Thompson's assets are
13 protected because of his wife, so he has a shield. So,
14 basically, he can legally --

15 MR. MASCHMEYER: Objection --

16 A -- get out of --

17 MR. MASCHMEYER: -- Judge.

18 A -- paying me.

19 MR. MASCHMEYER: Now she's giving a legal opinion -
20 -

21 THE COURT: All right.

22 MR. MASCHMEYER: -- as to what --

23 THE WITNESS: Okay.

24 THE COURT: You can --

25 MR. MASCHMEYER: -- Pennsylvania --

1 THE WITNESS: Sorry.

2 THE COURT: You can --

3 MR. MASCHMEYER: -- law is?

4 THE WITNESS: My understanding, that's what I'm
5 saying.

6 BY MR. GEORGE:

7 Q Did you do any investigation of how he held his assets?

8 A I did not, personally, no.

9 Q All right.

10 (Pause in proceedings)

11 Q Did you consider negotiating a provision that said that,
12 if you didn't get at least ten percent, that the settlement
13 agreement could be vitiated?

14 A I felt that, if I got what every, you know, other
15 unsecured creditors were getting, I'd be okay with that.

16 Q Okay. So is the answer to my question no?

17 A We could say no. It's not in here, I don't think. It's
18 not in here.

19 Q Have you begun taking actions to verify what the debtor
20 is doing through operations?

21 A We did do one visit, I think. I can't personally go,
22 but my lawyers went, Mr. Berkowitz and Ms. Handel visited the
23 factory to see -- is that what you mean?

24 Q Yes.

25 A Yeah, they visited once, later than I would have liked,

1 but they went.

2 Q Did you ever understand that, during the first three
3 iterations of the plan, that the creditors' committee was in
4 support of that plan?

5 A I understood that I was in support of that plan, even
6 though it was low.

7 Q Okay. But I'm asking you about whether you understood
8 whether the creditors' committee were -- was in support of
9 it.

10 A I don't remember hearing about -- actually, I don't
11 know. I know that I was --

12 Q Do you -- did you have your attorneys reach out to the
13 committee to find out what the status of the negotiations
14 were with the debtor?

15 A I'm sure they did.

16 MR. KIZNER: Objection. It calls for --

17 Q I didn't ask --

18 MR. KIZNER: -- hearsay, Your Honor.

19 Q -- you that, ma'am.

20 A There was a lot going on.

21 Q Okay.

22 A I'm trying to remember.

23 Q All right.

24 A Ultimately, I was treated fairly, so we were sort of
25 just watching what happened. I was treated fairly, so I

1 wasn't going to --

2 Q Okay.

3 A -- object.

4 Q So receiving at least ten percent is treating you
5 fairly?

6 A No.

7 Q Okay.

8 A Those are your words, again, twisting the situation,
9 which I --

10 Q I'm just asking --

11 A -- don't appreciate.

12 Q -- your understanding, ma'am.

13 A Well, that's not my understanding, sir.

14 Q Okay.

15 A I was treated fairly. Fifteen percent was low, but
16 again, we were all getting fifteen percent. That's fair.

17 Q Well, it's --

18 A So I'm not --

19 Q -- ten percent --

20 A -- going to say --

21 Q -- ma'am.

22 MR. KIZNER: Your Honor --

23 A In the other plans --

24 MR. KIZNER: -- is this being argumentative?

25 A -- it was 15. And I did not object because I didn't

1 have a right to object because I agreed, right? We were all
2 getting the same. That was fine, that was fair. That's
3 fair. I'm looking for fairness. You're looking to throw me
4 under the bus. Not nice.

5 (Participants confer)

6 MR. GEORGE: I don't have anything further for this
7 witness, Judge.

8 THE COURT: All right.

9 MR. MASCHMEYER: Your Honor --

10 THE COURT: Mr. Maschmeyer --

11 MR. MASCHMEYER: -- I have just --

12 THE COURT: -- do you wish to --

13 MR. MASCHMEYER: -- a few questions.

14 THE COURT: -- cross-examine?

15 CROSS-EXAMINATION

16 BY MR. MASCHMEYER:

17 Q I'm sorry. It's Ms. Magee, right?

18 A It is.

19 Q Ms. Magee. Fine.

20 A Thank you.

21 Q Ms. Magee, do you have the settlement agreement in front
22 of you?

23 A I do.

24 Q Okay. Can you turn to page -- it says 6 of 15.

25 A On the top, right?

1 Q Yes I'm going to use those as the numbers, if that's
2 okay.

3 A I see.

4 Q Is that your signature there?

5 A Yes, it is.

6 Q And what date did you sign this?

7 A I guess it looks like January 3rd.

8 Q 2018, correct?

9 A Yes.

10 Q And the plan of reorganization was confirmed in
11 September of 2018. Is that correct?

12 A I don't actually know that off the -- I don't know.

13 Q Okay. If I told you, though, it was confirmed in
14 September of 2018, do you have any reason to dispute that?

15 A Not unless my lawyer says that's incorrect.

16 Q It was confirmed, though, long after you signed this
17 agreement. Is that correct?

18 A That's -- so the September following this.

19 Q Yes.

20 A Okay.

21 Q And can you go back to the first page -- well, it's Page
22 2 of 15.

23 A Okay.

24 Q Go to the -- do you see the paragraph where it starts
25 off with "whereas"?

1 A Yes.

2 Q Okay. And if you go down to -- it's like the second-to-
3 last sentence, it's right after the words, it says the,
4 quote, "action." Do you see where I'm at there?

5 A No, I don't. I'm sorry. Is this towards the top of the
6 page, the "whereas"?

7 Q Yeah, the top page, second paragraph there.

8 A Okay. So part of this paragraph?

9 Q Yeah. If you go down past where it has all the italics
10 with all the names in the case there?

11 A Yes.

12 Q Okay. It says, "At the end of the settlement
13 conference." Do you see that?

14 A Yes, I do.

15 Q -- the parties entered into a binding settlement
16 agreement."

17 Do you see that?

18 A I do.

19 Q And this is the agreement you signed, correct?

20 A Yes.

21 Q Okay. Now the terms of this agreement -- you've
22 indicated over and over again you want to be treated fairly,
23 like every other unsecured creditor. Is that correct?

24 A That's the norm, I would say, yes.

25 Q Okay. Now what if the plan -- what if Mr. George,

1 representing the committee and the creditors, accepted a plan
2 of five percent?

3 A And representing me. He's supposed to represent me.

4 Q Excuse me?

5 A He's also supposed to represent me.

6 Q Well, put aside that. But if the plan only said the
7 creditors were going to get five percent on their claim --

8 A Right.

9 Q -- would you accept five percent?

10 A I don't know. It depends on many circumstances. That
11 seems very low. Ten percent was like sort of a bottom-of-
12 the-barrel possibility that we never thought would ever
13 happen. But if that's all --

14 Q Well --

15 A -- they could pay, we --

16 Q But that's --

17 A I mean, I don't know how to answer it. I -- it's very
18 low.

19 Q But your agreement --

20 A It was --

21 Q Your agreement states, though, that you have to get at
22 least ten percent to accept the plan, correct?

23 A It says that the plan has to pay out at least ten
24 percent.

25 Q Correct. So, if it paid out less --

1 A Right.

2 Q -- you were not bound to accept the plan.

3 A I would not be bound.

4 Q Now, under this settlement agreement, the first
5 paragraph is you -- the Debtor Lancaster and you agreed that
6 he would have an injunction against him for a year. Isn't
7 that correct?

8 A Where are you?

9 Q I'm sorry. The -- this next paragraph --

10 A Okay. Yes.

11 Q -- right after --

12 A I'm sorry.

13 Q -- the "whereas."

14 A Yes.

15 Q Okay. So you -- there was an injunction issued for a
16 year, correct?

17 A Yeah. You know, yeah. I -- yeah, technically.

18 Q Yes. And the second paragraph there, where it says,
19 "Commencing at 5:01" --

20 A Uh-huh.

21 Q -- and continuing for five years, they shall be
22 enjoined."

23 So there was a second injunction, correct?

24 A No, that's not -- that's not what this is.

25 Q That's not an injunction in your mind.

1 A It's not. They can't use my trade secrets anyway.

2 Q Okay.

3 A And I discussed with the Judge at length.

4 Q I --

5 A This was like a --

6 Q If you don't accept it, let me move on.

7 A It's not an injunction.

8 Q You would -- the parties agreed that you would get a
9 judgment against CO Nolt, also. Isn't that correct?

10 A You know, I'm trying to -- I don't know why I'm having a
11 blank with that, that one, but --

12 Q Well, it's right after --

13 A I see it.

14 Q -- the paragraph.

15 A No, I see it. I'm just not recollecting what -- which
16 company is which, who we have, what judgment -- I got
17 confused by all these different companies he's got, and I --

18 Q That's not my question, ma'am. My question is --

19 A Okay.

20 Q And I'll read it. It says:

21 "Dalmatia shall have judgment entered against CO
22 Nolt."

23 A Right.

24 Q Isn't that correct?

25 A It says that, yes.

1 Q Okay. Next paragraph:

2 "Dalmatia shall have the right to verify Lancaster
3 Fine Foods and Earth Pride Organics' compliance."

4 Isn't that correct?

5 A Correct.

6 Q Correct.

7 You mentioned before that you -- that the debtor has not
8 allowed you to send people in. Did you say that?

9 A I did not say that, sir.

10 Q Oh, okay. Isn't it a fact, on October 14th of '18, you
11 had individuals checks to make sure that the debtor was in
12 compliance --

13 A As I said --

14 Q -- with the injunctions?

15 A -- I sent two lawyers in.

16 Q Two lawyers. Okay. I'm sorry. I missed that.

17 A I think I -- I volunteered that information --

18 Q Okay.

19 A -- happily.

20 Q And I want to skip ahead. At the very end it says you -
21 - Mr. Thompson also agreed for a judgment of million-two
22 against him, individually. Isn't that correct?

23 A Yes.

24 Q Okay. Now you talked about -- and I still have to
25 understand. You talked about your big -- I'm going to use a

1 slang expression -- your big hunk of cash you were looking
2 for.

3 THE COURT: "Boatload," I think was the word.

4 MR. MASCHMEYER: "Boatload." Sorry.

5 THE WITNESS: That's right.

6 MR. MASCHMEYER: Thank you, Judge.

7 BY MR. MASCHMEYER:

8 Q If you look at the third paragraph up, the one with the
9 big black redaction line -- you see that, correct?

10 A I do, yes.

11 Q Is that the paragraph you were referring to, where the
12 boatload of cash was supposed to come from?

13 A I believe, yes.

14 Q Okay. Now doesn't that say that, if Mr. Thompson or a
15 designee pays you that boatload of cash, that the injunctions
16 would be terminated?

17 A Yes.

18 Q Okay. It also says the judgment against Nolt would be
19 stricken.

20 A Actually --

21 Q Is that correct?

22 A -- it doesn't say anything about injunctions. It says -
23 -

24 Q I'm sorry --

25 A It says -- I'm sorry. That's correct -- that's

1 incorrect, what you read --

2 Q It says --

3 A -- and it's incorrect --

4 Q -- right here --

5 A -- that I answered.

6 Q It says --

7 A So ... oh, no. You're right. You're right. My
8 apologies. So it says the injunctions will be terminated and
9 the claim against him would be vacated or whatever.

10 Q And the judgment --

11 A Stricken.

12 Q -- against Nolt would be stricken. Isn't that correct?

13 A Yes.

14 Q And that the judgment against Thompson would be
15 stricken, also, correct?

16 A Correct.

17 Q So, if he doesn't pay you that boatload of cash, you
18 still have all three of those remedies. Isn't that correct?

19 A Yes.

20 Q Okay. So there's nothing in this agreement that
21 required Mr. Thompson to pay you that money. Isn't that
22 correct?

23 A Just good faith and --

24 Q Good faith.

25 A -- a deal we had. Yeah. It's good faith, which is how

1 this was done, I thought.

2 Q But again, there's nothing that requires him, and if he
3 doesn't, you have other options available, correct?

4 A I have -- at this point, the only option available to me
5 is my claim in bankruptcy, there is nothing else.

6 Q You mentioned you thought you were the biggest unsecured
7 creditor in this case?

8 A Close to it. I think I was the first, and then I'm not
9 sure if his attorneys who didn't get paid ended up being
10 first or not.

11 Q Okay. So --

12 A I think they turned out to be first, right? I don't
13 know. We're right up there at the top. That's kind of close
14 enough.

15 Q Okay. So you're aware that Fox Rothschild --

16 A Right.

17 Q -- filed a claim --

18 A That's it.

19 Q -- of 2.5 million plus.

20 A Two five. Yeah, that sounds right.

21 Q Okay. You're also available [sic] that the IRS has a
22 claim of 2.5 million plus, also, correct?

23 A Oh, interesting. I remember hearing something about the
24 IRS, but --

25 Q Okay.

1 A Okay.

2 Q So you weren't the biggest creditor, you were one of the
3 creditors.

4 A Right, a big one.

5 Q Okay.

6 (Pause in proceedings)

7 Q Is there anything -- and I think -- I don't want to
8 repeat what Mr. George asked. Do you have any evidence that
9 the year injunction that was entered into, the first -- I'm
10 looking at the first one there on the settlement agreement --
11 that the debtor wasn't in compliance with that?

12 A I have evidence that it was meaningless.

13 Q Forget meaningless. Do you have any evidence that the
14 debtor did not comply with his requirement under this
15 settlement agreement to obey that injunction?

16 A No. To know that, I would have to be there every
17 minute, I'd have to follow them around. I can't do that, I
18 don't have those resources.

19 Q Okay. So you don't -- so you've taken -- so you have no
20 evidence at all that he was not in compliance.

21 A I have no -- I have no idea, one way or the other.

22 Q Okay. Let's look --

23 A I have a --

24 Q -- at the second --

25 A -- a feeling. A feeling isn't enough.

1 Q Thank you.

2 Let's look at the second paragraph, the five-year --

3 where he's enjoined for five years from selling fig spread.

4 And it's redacted, I don't know.

5 A Right.

6 Q Do you have --

7 A Because -- because --

8 Q -- any evidence here today that the debtor is not in
9 compliance with that requirement under this settlement
10 agreement?

11 A To know that, you would have to go through the recipes.

12 Q I didn't ask that.

13 A I'd have to --

14 Q The question I asked is: Do you have any evidence that
15 he's not in compliance with that today?

16 A As of today? I haven't really looked, honestly. I
17 haven't looked. I'd have to go look at jars, I'd have to do
18 some more investigations.

19 Q But the bottom line is because -- you don't -- you have
20 no evidence that he's not in compliance, right?

21 A I don't know one way or the other. He could be using
22 it. I have no way of knowing. He could have another
23 facility, for all I know. I have no way of knowing.

24 THE COURT: You really need to --

25 THE WITNESS: I --

1 THE COURT: -- answer his question. If don't know,
2 the reason -- you're giving me a lot of reasons why you don't
3 know.

4 THE WITNESS: Okay.

7 THE WITNESS: No.

8 THE COURT: -- right?

9 THE WITNESS: The answer is no.

10 THE COURT: Okay.

11 THE WITNESS: Okay. Sorry.

12 THE COURT: He's not asking you why, he's just
13 asking you whether.

14 THE WITNESS: Okay. No.

15 BY MR. MASCHMEYER:

16 Q You said, on 10/14/18, two individuals. I'm not sure if
17 they -- who they were, but you sent them out to see if --
18 didn't you send them out to -- for the purpose of seeing --

19 A Yes, that's --

20 Q -- if the debtor was in compliance with these
21 requirements?

22 A Yes, that's what I said. I sent -- I sent my lawyers,
23 Jerry --

24 || Q Okay. Did they --

25 || 0 -- Berkowitz and --

1 Q Did they -- and what -- did they come back and
2 communicate with you that he's not in compliance?

3 A No. They actually felt that from that -- from that
4 visit, they had no evidence that what -- that he was not
5 compliant.

6 (Participants confer)

7 Q So that brings me up to my next point. This paragraph
8 required the debtor to allow you to verify compliance with
9 the injunctions. Do you see that paragraph --

10 A Okay.

11 Q -- right under the CO Nolt statement there?

12 A Where are we? Where are we?

13 Q So the debtor has complied with that portion of this
14 settlement agreement. Isn't that correct?

15 A Yes.

16 Q Okay.

17 A Well, I mean, I don't have any for that. We went in, we
18 had the right.

19 Q Okay. And the next paragraph we discussed, while Mr.
20 Thompson did not pay you that amount of money --

21 A Uh-huh.

22 Q -- the bottom line is you still have your judgment
23 against Mr. Thomas. Isn't that -- or Thompson. Isn't that
24 correct?

25 A Again, meaningless, but yes.

1 Q Well, you still have the judgment against CO Nolt.

2 Isn't that correct?

3 A I don't know why I'm blanking out on that, but yes. I'm
4 going to say yes, because I kind of group them all together
5 in my mind.

6 Q And that -- and again, that judgment of a million-two is
7 still outstanding, correct?

8 A Against Thompson?

9 Q Yes.

10 A I'm told he's judgment-proof because of his marriage, so
11 I don't know what to say. It's outstanding, as far as I
12 know. I guess that's the question, is it outstanding.
13 Technically, it is.

14 Q Now Mr. George had asked if you had competent bankruptcy
15 attorneys representing you at the settlement of the -- when
16 you signed this agreement, correct?

17 A No.

18 Q You didn't have -- you had attorneys representing you
19 when this settlement agreement was signed, correct?

20 A I had -- do you mean the handwritten one by the Judge?

21 Q Yes. Yeah.

22 A So I had Lauren Handel there, she was my -- not a
23 bankruptcy lawyer. She's -- she was -- went through the
24 litigation with us.

25 Q Okay. And I presume you signed that based on her

1 recommendation, or at least after consulting with her. Isn't
2 that correct?

3 A I really signed -- I signed because the Judge wanted
4 this, and I wanted to support it, and I signed it.

5 MR. MASCHMEYER: I have no other questions.

6 EXAMINATION

7 BY THE COURT:

8 Q I only have one question before I allow redirect, and it
9 follows up on this last point that Mr. Maschmeyer was
10 raising. At the settlement conference with Judge Smith and
11 the other attorneys --

12 A Uh-huh.

13 Q -- you were represented by Mr. Handel, who you just said
14 is not a bankruptcy specialist.

15 A Correct.

16 Q Do I -- am I correct that I heard you tell us earlier,
17 though, that, during the course of that long day --

18 A Yes.

19 Q -- you had the opportunity by telephone to consult with
20 other attorneys about the settlement, who you feel are
21 bankruptcy specialists? Is that accurate?

22 A I did. I reached out to Mr. Berkowitz.

23 Q Okay. I'm just trying to understand who you had access
24 to --

25 A I did.

1 Q -- during the settlement negotiations.

2 A I called him.

3 Q So you had Ms. Handel. But outside of the room, by
4 phone, you had access to the bankruptcy attorneys.

5 A Yes, I called him.

6 Q Okay.

7 A I mean, I think he's a bankruptcy attorney. I don't
8 know the technical --

9 Q Well, there's no --

10 A But he knows more about it than Lauren, for sure.

11 Q Okay.

12 A And -- yeah.

13 Q All right. Thank you.

14 A Thank you.

15 THE COURT: Redirect.

16 REDIRECT EXAMINATION

17 BY MR. KIZNER:

18 Q Just while we're on that topic with Mr. Berkowitz. He
19 would -- did he have access to -- I mean, you said that you
20 called him. Like is that what happened during the settlement
21 conference? What was your communication with him?

22 A I just ran things by him --

23 Q Okay.

24 A -- as best I could.

25 Q Was it a phone call?

1 A It was a phone call.

2 Q Okay. I mean, would he have had --

3 A As it -- towards the end of the night.

4 Q Okay. And there was no -- it was just -- was it maybe
5 under -- how long was the call?

6 A I don't know.

7 Q Was the --

8 A A few minutes.

9 Q Was the agreement even written? Was the agreement even
10 written by that point --

11 A I don't think --

12 Q -- you spoke to him?

13 A -- it was written.

14 Q Do you know?

15 A No.

16 Q Okay. Do you know --

17 A It was (indiscernible)

18 Q -- if that language --

19 A This is the direction --

20 Q -- was squeezed in --

21 A -- we're going in. This is -- you know, what do you
22 think, this is -- this is -- it was that kind --

23 Q It was like --

24 A -- of a call.

25 Q -- general discussion?

1 A It was general. I mean, I -- I have to think about it.

2 I'm thinking about it --

3 Q Well --

4 A -- as you ask me.

5 Q -- what about the handwritten edition that -- on the --

6 that dealt with the ten percent?

7 A The payout --

8 Q I mean -- yeah.

9 A -- to the creditors?

10 Q Did you even remember if you had a chance to talk to him

11 --

12 MR. GEORGE: Your Honor --

13 A -- about that specific --

14 A I did not.

15 MR. GEORGE: -- he -- this is supposed to be

16 redirect. He's leading her.

17 THE WITNESS: No, I mean, I can answer it. I think

18 I've said it.

19 THE COURT: I don't think that was --

20 THE WITNESS: That was --

21 THE COURT: I don't think that was a leading
22 question. The question was: At or around the time that the
23 handwritten words were put in about the ten percent
24 requirement, did you have the opportunity to talk to Mr.
25 Berkowitz, or did you talk to Mr. Berkowitz?

1 BY MR. KIZNER:

2 Q Or do you recall?

3 A I do recall. It was like so late at night, I would
4 never think to call him at -- I did not call him at home at
5 eleven o'clock at night, no way. And this was the last thing
6 put in there, so -- that particular thing. A few things. I
7 mean, we -- basically, I called him halfway through. I said,
8 this is where we're going, this is the feel, this is what the
9 Judge wants, I'd like to support it, do you -- what do you
10 think. It was that kind of a call. And it was quick.

11 Q So he never had access to the written agreement then,
12 the handwritten agreement.

13 A He -- after the fact, after we had already signed. I
14 think I asked him to help Lauren.

15 Q Okay. That day, he didn't have access to it.

16 A No.

17 Q Okay.

18 A Not at that time. It was late, again.

19 Q That's all I asked about that.

20 We talked about they -- they mentioned briefly that a
21 judgment was entered against you, and it wasn't really -- it
22 was kind of taken out of context. Can you explain to the
23 Court what that was all about?

24 A Sure. So, before --

25 THE COURT: Do I really --

1 MR. GEORGE: Your Honor, this has to be within the

2 --

3 THE COURT: Do I really need to hear that? Why
4 does that matter?

5 MR. KIZNER: I just think because it's disparaging
6 and I wanted to rebut it, but --

7 THE COURT: It's not a good enough reason.

8 MR. KIZNER: Okay. We'll move on.

9 BY MR. KIZNER:

10 Q Do you have the -- you mentioned that -- Mr. Maschmeyer,
11 debtor's counsel and his co-counsel for the unsecured
12 creditors' committee, they kind of walked through, you know,
13 these benefits you received, and there was two discussions,
14 monetary and then these injunctions, so kind of two buckets.

15 Just so the record is clear, did you ever receive any
16 actual money --

17 A No.

18 Q -- from anything --

19 A No.

20 Q -- out of this settlement at all?

21 A No.

22 Q Okay.

23 A Nothing.

24 Q And was your understanding, when you entered into this
25 settlement agreement, that you would be paid money?

1 A Of course.

2 Q Okay.

3 A I wouldn't have settled. It was about the money. Since
4 I was giving up the injunction, it was about the money.

5 Q And --

6 A Otherwise, why did I go through a month-long trial and --
7 - for him stealing from me. I mean, I'm not going to --

8 THE COURT: All right.

9 A What am I --

10 THE COURT: You know what?

11 A -- supposed to --

12 THE COURT: It's not a controversial point that you
13 wouldn't have entered into the settlement --

14 THE WITNESS: All right.

15 THE COURT: -- unless you thought you were going to
16 get paid.

17 THE WITNESS: Right.

18 MR. KIZNER: Just --

19 THE COURT: We don't have --

20 THE WITNESS: Sorry. I'm --

21 THE COURT: You don't have to --

22 THE WITNESS: I'm getting --

23 THE COURT: -- belabor that.

24 THE WITNESS: I'm sorry. It's really kind of
25 emotional to think about some of this.

1 MR. KIZNER: Sure.

2 THE COURT: I understand.

3 THE WITNESS: So --

4 THE COURT: And I know you're doing your best.

5 THE WITNESS: I am.

6 THE COURT: Just trying to --

7 THE WITNESS: I am.

8 THE COURT: -- keep it under control here.

9 THE WITNESS: Okay.

10 BY MR. KIZNER:

11 Q You were -- you mentioned that you were seeking a new
12 trial at the time the settlement conference took place --

13 A Yes.

14 Q -- that's why you went back to --

15 A Yes, that was one of the things.

16 Q Well, you already had judgments, though, at that point,
17 right?

18 A We did.

19 Q All right. So --

20 A We wanted some -- there were potentially punitive
21 damages. I don't know, something with -- again, I'm not a
22 lawyer, but something relating to jury instructions and
23 things like that where things -- they didn't understand some
24 things, and we wanted -- we wanted a retrial on a couple of
25 things. And it felt strong to me, at the time.

1 Q So you made a monetary concession by not -- potentially
2 --

3 A By not --

4 Q -- not trying --

5 A -- going forward with that. Also, we wanted -- we were
6 seeking judgment as a matter of law on the contract claim
7 because we had a two-year -- two-year non-compete, and we
8 wanted the Judge to make a ruling because it really wasn't
9 for the jury, they didn't know the law. I think that was
10 mainly it. And then the forever injunction we were seeking.

11 MR. KIZNER: Okay. That's all I have, Your Honor.

12 THE COURT: Any recross?

13 MR. GEORGE: Just a couple.

14 RECROSS-EXAMINATION

15 BY MR. GEORGE:

16 Q Earlier, you testified about your bankruptcy lawyer,
17 that you retained him and you had a retainer agreement.

18 A Yes.

19 Q Do you remember testifying that way?

20 A Yes.

21 Q And did you enter into that retention agreement before
22 the settlement agreement was negotiated, on the day of?

23 A No, no, before. He was hired -- he wasn't Stark &
24 Stark. Stark & Stark is -- he was --

25 Q I didn't say he was Stark & Stark, ma'am.

1 A Yeah, he's --

2 Q I'm asking --

3 A -- a different --

4 Q -- a question.

5 A -- function.

6 Q You said that you engaged an attorney.

7 THE COURT: Berkowitz.

8 Q Mr. Berkowitz.

9 A Correct.

10 Q And asked you did you hire him, and you said yes, and I
11 asked you was there a retainer agreement, and you said yes.

12 A Yes.

13 Q And I'm asking you: Did you enter into that on the day
14 of the settlement agreement, before the settlement agreement?

15 A Well before.

16 Q Okay. So, at the time that you negotiated the
17 settlement agreement, you had retained a bankruptcy lawyer.

18 A I don't know if he's technically a bankruptcy lawyer.

19 He sure knows more about it than Lauren.

20 Q Okay.

21 A I would say they -- I'd say --

22 Q Well, do you --

23 A -- Stark & Stark is a bankruptcy firm. I -- I don't
24 know if Jerry is -- I don't know. I don't know these terms.

25 Q Okay.

1 A He certainly knows much more than Lauren.

2 Q But you specifically felt that he was someone you should
3 talk to about the bankruptcy issues.

4 A I actually just think he's a smart guy and I like
5 running things by him. I didn't think in terms of
6 bankruptcy, to tell you the truth. He's a smart guy.

7 MR. GEORGE: Nothing further, Judge.

8 A I like him, he's nice. He's helpful.

9 THE COURT: Mr. Maschmeyer?

10 MR. MASCHMEYER: I just had one question.

11 THE WITNESS: Sure.

12 RECROSS-EXAMINATION

13 BY MR. MASCHMEYER:

14 Q Ms. Magee, isn't it true that you had numerous other
15 mediations dealing with the settlement of this matter?

16 A We sure did. Judge Smith was really intent on having us
17 settle. We tried many times.

18 MR. MASCHMEYER: Okay. I have no other questions,
19 Judge.

20 THE COURT: Thank you.

21 THE WITNESS: Thank you.

22 THE COURT: You are done.

23 THE WITNESS: Thank you.

24 THE COURT: You can step down.

25 THE WITNESS: Okay.

1 (Witness excused)

2 (Participants confer)

3 THE COURT: Mr. Kizner, are you intending to call
4 any other witnesses?

5 MR. KIZNER: Your Honor, just for the -- no. But
6 for the record, I just want to make sure that D-1 is -- well,
7 if there's no objection, we move it into evidence.

8 THE COURT: You want to move D-1 into evidence.

9 MR. GEORGE: No objection.

10 MR. MASCHMEYER: No objection.

11 THE COURT: All right. D-1 is admitted.

12 (D-1 received in evidence)

13 THE COURT: All right. I gather the committee is
14 going to go first when it comes to the --

15 MR. GEORGE: No, I think the debtor is going --

16 THE COURT: Oh, the debtor --

17 MR. GEORGE: -- to go first --

18 THE COURT: -- going to go first.

19 MR. GEORGE: -- on this piece, Judge.

20 THE COURT: So let's do the logistics part. It's
21 12:10. I'm very flexible about how you want to go forward.
22 If you want to power through, I'll power through. If you
23 want to take a break for sustenance, I'll do that.

24 MR. MASCHMEYER: Only --

25 THE COURT: Try to reach a consensus about that.

1 MR. MASCHMEYER: I just would -- a ten- or fifteen-
2 minute break is all I need, Judge, then we can go forward.

3 (Participants confer)

4 MR. MASCHMEYER: If that's okay.

5 THE COURT: How does everybody else feel about it?
6 Would you rather try to go through as quickly as we can, or
7 do you want -- otherwise, I'll take a lunch break for
8 everybody, if you want.

9 MR. KIZNER: Your Honor, it's just my -- the Court
10 is going to stop at 4:30, I assume, no matter what? I mean,
11 just because I have to be home, I have to leave at 4:30. So
12 I don't want to run into a problem that we don't have time
13 today if the Court was to go after hours. That's my concern.

14 THE COURT: Well --

15 MR. GEORGE: Let's just push through.

16 MS. MAGEE: Let's push through.

17 (Participants confer)

18 THE COURT: I probably will -- if you need to go --

19 MR. MASCHMEYER: Ten minutes is fine.

20 THE COURT: -- I'm willing to stop at 4:30. That's
21 close enough to 5, that's not that --

22 MR. KIZNER: Oh, okay.

23 THE COURT: -- significant to me, so --

24 MR. KIZNER: I mean, I can -- I can leave at, I
25 guess a little bit later, but I will have no one --

1 THE COURT: So your preference --

2 MR. KIZNER: -- watching my kids.

3 THE COURT: -- is to --

4 MR. KIZNER: My preference is --

5 THE COURT: -- pretty much --

6 MR. KIZNER: -- to just --

7 THE COURT: -- keep going?

8 MR. KIZNER: -- is just to go because I think
9 everyone wants to ...

10 (Participants confer)

11 THE COURT: All right. Nobody is disagreeing, from
12 what I can tell. All right. So let's just use the fifteen-
13 minute break that Mr. Maschmeyer suggested. It's now 12:12.
14 Let's come back by and be really ready to go at 12:30.

15 MR. MASCHMEYER: Yes, Judge. Thank you.

16 THE COURT: Okay.

17 (Participants confer)

18 MR. CIANCIULLI: Your Honor, just so you know -- I
19 don't know if anyone is going to call me, but I have an
20 appointment at 1, I'm leaving, I have not been subpoenaed.
21 But I can come back later today, but --

22 THE COURT: Is anybody intending to call him?

23 MR. CIANCIULLI: Just so the parties need to know?

24 (Participants confer)

25 THE COURT: Well, I'm asking. If you would be

1 called, you'd be called by either the committee or the
2 debtor.

3 MR. CIANCIULLI: Right.

4 THE COURT: They've now heard the other side's
5 case.

6 MR. GEORGE: Right. Let me just talk to --

7 THE COURT: Do you need a few minutes to make a
8 decision about that?

9 MR. GEORGE: We'll make it right now, Judge,
10 outside.

11 THE COURT: All right. Why don't we all wait until
12 we see what that is because, if you want to call him, we
13 probably should just call him right now.

14 (Participants confer)

15 MS. MAGEE: Should we stay?

16 THE COURT: Yeah, why don't you wait for a minute.
17 Let's see what they plan on doing.

18 MS. MAGEE: Okay.

19 (Participants confer)

20 MR. GEORGE: Your Honor, can we just go back on the
21 record for a second.

22 THE COURT: Sure.

23 MR. GEORG0E: What -- counsel to Dalmatia and the
24 committee and the debtor agreed to this, that we won't need
25 Mr. Cianciulli if the debtor stipulates to the statement that

1 was made by counsel in the opening statements to Your Honor,
2 that there was no discussion about the classification during
3 the settlement discussions.

4 THE COURT: I think that's vague. I'd like you to
5 really be concrete about what the stipulation is. Work on
6 the words for a second.

7 MR. GEORGE: Okay.

8 THE COURT: See if there's an agreement.

9 (Participants confer)

10 MR. GEORGE: All right, Judge. We're going to take
11 the break. Mr. Cianciulli will come back at 2:30, if he has
12 to.

13 THE COURT: Okay. Are you going to have other
14 witnesses?

15 MR. GEORGE: Just Mr. Thompson.

16 MR. MASCHMEYER: Just Mr. Thompson.

17 THE COURT: All right. So, if Mr. Cianciulli --

18 MR. GEORGE: I don't see --

19 THE COURT: -- is held up --

20 MR. GEORGE: -- this going --

21 THE COURT: -- he can --

22 MR. GEORGE: -- to 4:30 --

23 THE COURT: -- go last.

24 MR. GEORGE: -- under any --

25 THE COURT: That's all. I mean, it's not critical

1 when he testifies, right?

2 MR. GEORGE: No.

3 THE COURT: Okay. So your preference is to put him
4 on, and you'd rather do that at what time, at 2:30?

5 MR. GEORGE: Yeah, around 2:30. So we'll --

6 THE COURT: So we'll --

7 MR. GEORGE: -- put Mr. --

8 THE COURT: -- still take a --

9 MR. GEORGE: -- Thompson on --

10 THE COURT: -- short break, and we'll resume --

11 MR. GEORGE: So --

12 THE COURT: -- and then we'll work our way up to
13 Mr. Cianciulli.

14 MR. GEORGE: Thank you.

15 THE COURT: All right. That's fine. The Court
16 will be in recess until 12:30.

17 MR. KIZNER: 12:30? All right. Great.

18 (Recess taken at 12:16 p.m.)

19 (Proceedings resume at 12:38 p.m.)

20 (Call to order of the Court)

21 THE COURT: That was pretty close to staying on
22 schedule. I'm impressed.

23 All right. Mr. Maschmeyer, I think you're up,
24 right?

25 MR. MASCHMEYER: Yes. Judge, I'd like to call Mr.

1 Thompson to the stand.

2 THE COURT OFFICER: Mr. Thompson, please place your
3 left hand on the Bible and raise your right hand.

4 MICHAEL THOMPSON, WITNESS FOR THE DEBTOR/RESPONDENT, SWORN.

5 THE COURT OFFICER: Please be seated.

6 (Participants confer)

7 THE COURT OFFICER: Please state and spell your
8 name for the record.

9 THE WITNESS: Michael S. Thompson, T-h-o-m-p-s-o-n.

10 THE COURT OFFICER: Please state your address for
11 the record.

12 THE WITNESS: 490 Snyder -- with a Y -- road,
13 Lititz, L-i-t-i-t-z --

14 THE COURT OFFICER: Uh-huh.

15 THE WITNESS: -- PA, 17543.

16 THE COURT OFFICER: Thank you.

17 DIRECT EXAMINATION

18 BY MR. MASCHMEYER:

19 Q Mr. Thompson, presently, what's your position with
20 Lancaster Fine Foods and Earth Pride Organics?

21 A I am President or CEO of both.

22 Q Okay. And you're familiar with the litigation of
23 Dalmatia against Lancaster Fine Foods and Earth Pride
24 Organics. Is that correct?

25 A Painfully.

1 Q Okay. When did this litigation start?

2 A It started in October of 2015.

3 Q '15.

4 I -- could you give us -- and I don't want to go on and
5 on. But just give us a brief synopsis of what your
6 understanding of this litigation was.

7 A Okay. In 2015, Ms. Magee re -- after a three-year
8 absence, became involved in the business again, and she had
9 an issue with the President of FOODMatch. He didn't
10 recognize her properly at a food show, at a ceremony at a
11 food show. And at that time, she decided that she wanted to
12 change distributors.

13 The relationship was a three-party relationship. We
14 were the manufacturer, Dalmatia was the brand, brand owner,
15 and FOODMatch was the exclusive distributor and had been
16 since the first day that she entered the U.S. market. And
17 they had grown the business from zero to like \$10 million.

18 Q Okay.

19 A In --

20 Q And -- keep going.

21 A Okay. In September of 2017 -- or excuse me -- '15, Ms.
22 Magee put in a purchase order for ten truckloads of fig jam,
23 more than a half a million dollars worth of fig jam.

24 MR. KIZNER: Your Honor, I object to the -- this
25 has nothing to do with the -- with what we're here for today.

1 THE COURT: Yeah, how much background do we need
2 about the litigation --

3 MR. MASCHMEYER: I'm just --

4 THE COURT: -- that ended in a jury verdict and
5 then a settlement --

6 MR. GEORGE: Well, Your Honor, because --

7 THE WITNESS: I -- I can do it in five minutes.

8 MR. GEORGE: -- because she characterized it as the
9 debtor stealing from her, and I don't want the Court --

10 THE COURT: What difference does it make if the
11 issues are resolved? Why do I have to go back and hear who's
12 right and who's wrong about -- yes, she characterized it. If
13 -- I assure you that I don't care how she characterized it,
14 this is all irrelevant.

15 MR. MASCHMEYER: I understand, Judge. I'll fast-
16 forward here. Mister --

17 THE COURT: And it's not like -- and I say that.
18 I'm the fact-finder, so by letting -- by telling you that,
19 I'm letting you know why you're not prejudiced --

20 MR. MASCHMEYER: Gotcha.

21 THE COURT: -- if we just skip over this.

22 MR. MASCHMEYER: I understand.

23 MR. GEORGE: Understood, Judge.

24 MR. MASCHMEYER: Understood.

25 BY MR. MASCHMEYER:

1 Q Is B-1 [sic] still in front of --

2 A There's nothing here.

3 UNIDENTIFIED: Sorry.

4 MR. MASCHMEYER: Do you have it? Oh, okay. Good.

5 (Participants confer)

6 MR. MASCHMEYER: Thank you.

7 THE WITNESS: Thanks.

8 MR. MASCHMEYER: Oh, D-1. Is it D-1? D-1.

9 MR. GEORGE: It's D-1.

10 MR. MASCHMEYER: Sorry.

11 BY MR. MASCHMEYER:

12 Q Mr. Thompson, do you recognize that document?

13 A Yes, I do.

14 Q And is that the settlement agreement that was entered
15 into between you and Dalmatia concerning the litigation?

16 A Yes, it is.

17 Q And this settlement agreement was entered into after a
18 long mediation. Is that correct?

19 A After -- yeah, we -- we had tried several times before
20 that, and then we had a court hearing, as -- as she said, and
21 we were there for maybe 10, 11 hours, and so 8 p.m. that
22 evening, we had -- we entered into this agreement.

23 Q So there were numerous other mediations, other than this
24 one?

25 A We had tried to mediate with Ms. Magee since the Spring

1 of 2016. So Judge Smith had brought the parties together and
2 -- and he did, he really wanted to come to a peaceful
3 settlement, but -- and each time, she backed out.

4 Q Okay. So let's go to -- you have the -- let's look at
5 Page 2. Up at the top, it says "Page 2 of 15." Do you see
6 that?

7 A Oh, okay. The first page is --

8 Q Yes.

9 A -- actually 2.

10 Q Yeah.

11 A Okay.

12 Q Do you have that in front of you, sir?

13 A Yeah.

14 Q Okay. You agreed, pursuant to this settlement -- both
15 sides agreed to basically give something up and get something
16 in settlement. Would that be a correct characterization?

17 A Yes, I would say that that's true.

18 Q The first paragraph there, where it says "Injunction
19 entered effective October 12, 2017." Do you see that?

20 A I do.

21 Q Okay. First of all, that injunction was entered after
22 you had filed bankruptcy. Is that correct?

23 A That is correct.

24 Q Okay.

25 A About five months after.

1 Q Can you --

2 A Four and a half months.

3 Q Explain to us what -- how did this injunction impact
4 your business?

5 A Well, first of all, this -- this agreement was made on
6 the 10th or the 11th. And we were, at the time, producing
7 product for FOODMatch. And we had an order that was about to
8 go out. And we agreed -- and I think it's in here -- I think
9 it was one or two truckloads of product would be shipped
10 immediately, and then, unfortunately, we would cancel
11 existing orders; even though we had the ingredients for them,
12 we would cancel orders for additional truckloads.

13 And she's right, it is a more seasonable business that -
14 - we canceled a number of truckloads to be shipped out later
15 -- not to be produced and shipped out, later October,
16 November, and December, during the holiday entertaining
17 season.

18 Q Okay. And in -- we're talking about shipping fig
19 product. Isn't that correct?

20 A Fig jam.

21 Q Fig jam.

22 You know, there was some testimony earlier about who
23 invented fig jam. And I don't know if --

24 A Yeah, fig jam goes --

25 Q -- Ms. Magee was trying to indicate she did, but --

1 A Yeah, that -- that's -- that's kind of funny.

2 MR. KIZNER: Objection, Your Honor. What's the
3 relevancy of this?

4 A Fig jam was actually --

5 THE COURT: Hold on, wait a second. There's an
6 objection, objection on relevancy. Well, I'm going to rule
7 the same way I did before. To the extent that he's going to
8 speak to the subject that Ms. Magee already testified about,
9 I'll let him give his perspective on it, as long as we're
10 brief.

11 MR. MASCHMEYER: Sure. Yes.

12 BY MR. MASCHMEYER:

13 Q Make it short.

14 THE COURT: So it's overruled.

15 A Okay. Fig jam goes back almost to 100 A.D. It was
16 prepared by Greek and Romans back in there, and that's why
17 Dalmatia has the jar they do. It looks like a Roman urn. In
18 fact, before Dalmatia came to our -- us and asked us to
19 produce their particular product, we had produced product for
20 two other brands of fig jam. One we were still producing and
21 continued to produce for during the time that we produced for
22 Dalmatia.

23 Q Okay. So --

24 A So that it was not 1995. Fig jam has been around
25 forever.

1 Q Okay. Thank you.

2 To go back to this injunction, did the company lose any
3 money? And how much money did the company lose by having --
4 entering into this injunction?

5 A Well, it was significantly painful. We lost total sales
6 of -- during that twelve-month period, of probably 1.3, 1.5
7 million, and the positive cash flow out of that would have
8 been well over half a million. And I explained that to -- to
9 Ms. Magee in our discussion. I said, what you're asking me
10 is really painful for my company because, you know, I know
11 you don't want Dalmatia -- don't want FOODMatch to have
12 product, but it's really painful for me.

13 So I really -- I fought her on the injunction because it
14 was -- it was going to hurt our cash flow, our profitability,
15 covering our overhead at a time that it couldn't be worse for
16 us because we were in bankruptcy.

17 Q In Chapter 11, correct?

18 A Chapter 11 bankruptcy, yes.

19 Q Okay. So you gave up -- the company gave up something
20 of value, great value, in agreeing to this injunction.

21 A And I was transparent with her that -- with the numbers,
22 too, what it was. And that's how we came to that blacked-out
23 number that's -- that's on the -- on this.

24 Q I'll get to that in a second --

25 A Okay.

1 Q -- Mr. Thompson.

2 Let's go to the second injunction -- at least I think
3 it's an injunction. It indicates about a five-year
4 injunction.

5 A And do you have that, so I can refer to it, what page?

6 Q Oh, it's the same page, it's the paragraph right under
7 that.

8 A Okay.

9 Q It says "Commencing 5:01." Do you see that?

10 A Uh-huh.

11 Q What was that injunction about?

12 A That injunction is not her recipe. We've never used her
13 recipe, and that's in the court. The recipe that we made for
14 FOODMatch was much, much different than hers, but still has
15 figs and sugar, but it was different.

16 Q Did that affect your business at all, not being able to
17 produce any of that?

18 A This -- this -- this injunction has to do with using two
19 [REDACTED] and has nothing to do with using her formula. She's
20 -- she's correct. We would not be allowed to use her
21 formula, which actually we developed.

22 MR. KIZNER: Objection, Your Honor.

23 A But --

24 MR. KIZNER: This goes into the confidentiality
25 agreement, certain terms that were -- so do we seal this when

1 --

2 THE COURT: Well, he's not putting in -- he's not
3 stating the precise measurements. Is that -- should that
4 make it okay? I'm asking that as a question.

5 MS. MAGEE: Mr. Thompson's --

6 THE COURT: Because he mentioned one word that
7 might be problematic.

8 So if you can avoid doing that again, maybe we can
9 just move on. But your point I'm taking is that it's not
10 designed to enjoin you from using their particular formula,
11 but from using --

12 THE WITNESS: It's a process. It's a --

13 THE COURT: -- a certain kind of process with
14 certain kinds of percentages of certain things --

15 THE WITNESS: That would be --

16 THE COURT: -- which may -- which might even be
17 different than their formula. Is that right? Is that what
18 you're telling me?

19 THE WITNESS: It's the same as their formula, they
20 being Dalmatia, but it's different than any of the other
21 formulas that we are producing, and that, too, was held up in
22 Court.

23 THE COURT: And now you've confused me because --
24 let me see if I can get this clarified, and then I'll give it
25 back to you, Mr. Maschmeyer.

1 MR. MASCHMEYER: Okay.

2 THE COURT: Mister --

3 MR. MASCHMEYER: Mr. Thompson --

4 MR. GEORGE: Wait, wait.

5 THE COURT: No, no.

6 MR. GEORGE: The Judge.

7 THE COURT: I'm going to try to class --

8 MR. MASCHMEYER: Oh, I'm sorry.

9 THE COURT: -- clarify it.

10 Ms. Magee is describing this injunction as simply
11 enjoining the debtors from using her formula. I thought I
12 heard you saying that it's actually enjoining the company
13 from doing something other than using her formula that you
14 otherwise might have been able to do.

15 THE WITNESS: That is correct. It's --

16 THE COURT: It's the second thing --

17 THE WITNESS: It's the second thing.

18 THE COURT: -- that I said.

19 THE WITNESS: We -- yeah, I agree with her that we
20 should not, could not, never did use her formula for someone
21 else. But there is a certain item in that formula that could
22 be perceived as making the product better or easier to make
23 that we are enjoined from doing --

24 THE COURT: Okay.

25 THE WITNESS: -- for five years.

1 THE COURT: Okay. We can stop there. That
2 satisfies me, anyway.

3 Go ahead, Mr. Maschmeyer.

4 BY MR. MASCHMEYER:

5 Q And I'm just trying to look at the economics of this.
6 Does that affect you, economically, the business; are you
7 losing business or money because you can't -- you're subject
8 to this?

9 A Yeah. Possibly. It's harder to put the exact number on
10 -- the first year, I know that cost is five hundred,
11 \$700,000.

12 Q Gotcha.

13 A This cost us some, but I -- you know, that's -- it's
14 kind of putting a number -- I couldn't put a number against
15 something that I don't know what business we're -- we're not
16 turning down. The other was very immediate, very direct, and
17 very painful.

18 Q Gotcha.

19 A And if I could add, very much of interest to her.

20 Q Okay. Why was that?

21 A Well, she was in the marketplace competing against
22 FOODMatch. And if FOODMatch's supply got interrupted going
23 into the key holiday season, then they would sell more of
24 their product and get more profit and more market share and
25 make FOODMatch look poorly to retailers because they were --

they had a gap in supply in the Thanksgiving to Christmas period, which is a key period if you're into figs, fig jam.

3 Q These injunctions, did they have any effect on your
4 business with FOODMatch?

5 A Yeah, it hurt a lot, and we're not producing for them to
6 this day. So it -- it -- it has a continuing effect. So the
7 -- if you look at 12 months being five hundred to \$750,000,
8 we -- we have been injured this holiday season, too, that we
9 thought we would be producing for. But because we -- we
10 changed -- and this was, I think, part of her strategy --
11 they got started with something else, so ...

12 (Participants confer)

13 Q Did these injunctions cause any other problems with any
14 of your other customers?

15 MR. KIZNER: I'm going to object to the relevancy
16 again, Your Honor. I feel like we just keep going further
17 away from the issue of the settlement agreement, the
18 language.

19 THE COURT: I'm not sure I heard the question
20 because your voice dropped off. What was the question again?

21 BY MR. MASCHMEYER:

22 Q Other than FOODMatch, did this affect any of your other
23 customers of your business?

24 A It affected --

25 THE COURT: I'll let it in because it's just going

1 to finish this line of questioning.

2 MR. MASCHMEYER: Okay.

3 THE WITNESS: The effect put some uncertainty with
4 other customers and made them concerned about our viability
5 long term, which, again, I think was part of Ms. Magee's
6 strategy. And also, we were stuck with figs that we couldn't
7 -- we ended up actually throwing them away, so that we were
8 impacted by another 20,000 of buggy figs that we were not
9 able to use.

10 BY MR. MASCHMEYER:

11 Q Mr. Thompson, in addition to -- in this settlement
12 agreement, in addition to agreeing to these injunctions,
13 which you've now testified was -- caused harm to the company,
14 in the sense it lost -- you lost revenue because of it, you
15 also agreed that the CO Nolt judgment would be allowed to be
16 entered against them. Isn't that correct?

17 A That's correct.

18 Q And that's a subsidiary or related company. Is that
19 correct?

20 A Yeah. CO Nolt was added to the case the day before
21 Christmas of 2016. They -- they just added it. We had
22 already decided, in September of 2016, to close Nolt. So Nolt
23 is a nonentity. It shouldn't have been included in the case
24 to start off with. She wanted that for -- to show. And I
25 said, you know, there's nothing there.

1 THE COURT: Let me stop you.

2 A I'll give it to you.

3 Q Okay.

4 THE COURT: There was actually no -- not even any
5 question. If you kept it short, I might not have said
6 anything.

7 MR. MASCHMEYER: Okay.

8 THE COURT: Why don't you ask a question, Mr.
9 Maschmeyer.

10 MR. MASCHMEYER: So you didn't have a question --

11 THE COURT: I'm cutting him off --

12 MR. MASCHMEYER: Yeah, okay.

13 THE COURT: -- because it was turning --

14 MR. MASCHMEYER: Gotcha.

15 THE COURT: -- into a narrative of -- when there
16 was no question.

17 MR. MASCHMEYER: Gotcha.

18 BY MR. MASCHMEYER:

19 Q You also agreed to a judgment against yourself for a
20 million-two. Isn't that correct?

21 A That is correct.

22 Q Okay. Let's go back to the paragraph where you've
23 agreed -- the company has agreed to pay Dalmatia at least ten
24 percent. You were present when that was negotiated. Is that
25 correct?

1 A That's correct. Could you -- just to make sure I don't
2 mess up any word, what page is that?

3 Q It's the same page, Page 2.

4 A Okay.

5 Q It's the third paragraph.

6 THE COURT: The paragraph below the first --

7 A Okay.

8 THE COURT: -- the first set of --

9 Q Set of -- yeah --

10 THE COURT: -- black -- blacked-out --

11 A Okay.

12 Q Black line, yeah.

13 THE COURT: -- lines.

14 A Okay.

15 Q When those discussions were occurring, was there any
16 discussions at all concerning the other unsecured creditors
17 in your case, at that --

18 A Ms. Magee was certain that we'd be out of business, and
19 she wanted something. And --

20 THE COURT: You're actually not answering the
21 question.

22 MR. MASCHMEYER: Yeah.

23 THE COURT: Answer his question first.

24 THE WITNESS: Okay.

25 BY MR. MASCHMEYER:

1 Q Yeah. My question was: Were there any other -- was
2 there any discussions about the unsecured creditors in the
3 case and how that would relate to the ten percent?

4 A No.

5 Q No. Okay.

6 (Participants confer)

7 Q Okay. Mr. Thompson, you agreed -- if you'd go now down
8 three more paragraphs, to the paragraph with the big, black
9 redaction line. Do you see that?

10 A Uh-huh.

11 Q The first -- all right. Okay.

12 You agreed that, if you paid a certain amount of money
13 to Ms. Magee, she would release you from various -- I'm going
14 to call it "claims." Isn't that correct?

15 A That is correct.

16 Q Okay. And you did not pay that money. Isn't that
17 correct?

18 A That is correct.

19 Q Was there any obligation to pay that money?

20 A No, it was an either/or. I could pay that to eliminate
21 the injunction and produce product and -- or let the year go,
22 and fulfill the injunction.

23 Q Okay. So that was a choice you had.

24 A A choice I had.

25 Q Okay.

1 (Pause in proceedings)

2 Q Are you aware -- are there -- have you obeyed this
3 settlement agreement, to the best of your ability?

4 A We have.

5 Q Okay. So you're not -- you haven't violated any of the
6 injunctions?

7 A No. And they came and they spent the most part of the
8 day, two attorneys, going through all of our records and
9 checking, and they were comfortable we had lived up to the
10 injunction.

11 Q And this was entered into, and with your free will, this
12 agreement, correct?

13 A Correct.

14 Q Okay.

15 MR. MASCHMEYER: I don't have any other questions,
16 Judge.

17 THE COURT: Mr. George --

18 MR. GEORGE: Yes.

19 THE COURT: Do you wish to --

20 MR. GEORGE: Just a couple.

21 THE COURT: -- examine the witness?

22 THE WITNESS: Excuse me, can I get --

23 MR. GEORGE: Sure.

24 THE WITNESS: -- water?

25 THE COURT: There's water. Help yourself.

1 THE WITNESS: Just water, nothing else there?

2 THE COURT: It's just water, no, it's not seltzer,
3 not juice, it's not fig juice, it's not alcohol.

4 (Participants confer)

5 THE WITNESS: Okay. I'm ready.

6 CROSS-EXAMINATION

7 BY MR. GEORGE:

8 Q Mr. Thompson, during the negotiation of the provision
9 that we're here on, with respect to what the plan has to pay
10 out, did Ms. Magee ever express to you her view of whether
11 the debtor had viability going forward?

12 A Often, often.

13 Q And what did she say to you?

14 A That she didn't see us going forward or -- and that had
15 -- it wasn't just during that time; it would have been all
16 the way to the beginning of the case.

17 Q She consistently expressed her view that your company
18 would fail.

19 A Correct.

20 MR. KIZNER: Objection, Your Honor.

21 MS. MAGEE: When did I do that?

22 MR. KIZNER: It's all hearsay. Sh.

23 MR. GEORGE: It's an --

24 THE COURT: I'm sorry.

25 MR. KIZNER: It's all hearsay, Your Honor.

1 THE COURT: What's the objection? How is it
2 hearsay?

3 MR. GEORGE: She's a party.

4 MR. KIZNER: That she testified that -- he's saying
5 what she said.

6 THE COURT: Yeah.

7 MR. KIZNER: It's her testimony --

8 THE COURT: And she's the principal of the party
9 defendant. So isn't that an exception? It's not an
10 exception. It's -- it's defined as not hearsay.

11 MR. KIZNER: Okay.

12 THE COURT: A statement of a party opponent.
13 Overruled.

14 BY MR. GEORGE:

15 Q Did she ever tell you that, if other creditors got more
16 than ten percent, that she wanted more than ten percent?

17 A No.

18 Q And was it any secret to the parties that the Official
19 Committee of Unsecured Creditors had not agreed to a deal
20 with the debtor at the time of this negotiation?

21 A I don't believe there was any belief that there was.
22 There wasn't.

23 Q Did you ever express in that meeting that the
24 negotiation with the creditors' committee for what unsecured
25 creditors would receive was finalized?

1 A We didn't discuss the UCC at all.

2 Q And in fact, the negotiations with the committee went on
3 several months after you concluded this settlement, didn't
4 it?

5 A Correct. It hadn't even really started at that point.

6 Q Did any of the other creditors get injunctions or
7 personal judgments against you or your companies?

8 A No. No.

9 Q And the payment to the unsecured creditors is over a
10 substantial period of time, isn't it?

11 A It is; it's over eight years.

12 Q Eight years.

13 And the only reason that there is any possibility of
14 that happening is if the debtor can make certain tax changes
15 with respect to its net operating losses, isn't it?

16 A Correct, yeah.

17 Q And so, if those records -- or returns can't be adjusted
18 to take advantage of those tax losses, then those revenues
19 won't be there, will they?

20 MR. KIZNER: Your Honor --

21 A I'm not --

22 MR. KIZNER: -- is all leading.

23 THE COURT: Hold on.

24 THE WITNESS: Yeah.

25 MR. KIZNER: Your Honor, this is all leading.

1 THE COURT: It would help me if you would --

2 MR. KIZNER: The objection is --

3 THE COURT: -- make your objections a little
4 louder, so that --

5 MR. KIZNER: The objection --

6 THE COURT: -- I can hear them.

7 MR. KIZNER: -- is it's leading information --
8 leading questions. He's testifying for the witness.

9 THE COURT: He is leading.

10 THE WITNESS: I --

11 THE COURT: And I don't know --

12 THE WITNESS: Sorry.

13 THE COURT: You're going to have to wait, Mr.
14 Thompson.

15 MR. GEORGE: Well, Your Honor, he's --

16 THE COURT: He's not a hostile --

17 MR. GEORGE: -- the debtor's --

18 THE COURT: He's not --

19 MR. GEORGE: -- witness.

20 THE COURT: Yes, but --

21 MR. GEORGE: I'm crossing him, really.

22 THE COURT: You're not -- you're really on the same
23 side of the case.

24 MR. GEORGE: Well, wouldn't I have my own case, if
25 I wanted to put my own case on, that would be independent of

1 the debtor?

2 THE COURT: Understood, but I don't think you're
3 adverse to the witness.

4 MR. GEORGE: Okay.

5 THE COURT: Don't you think you shouldn't lead him?

6 MR. GEORGE: Okay, Judge.

7 THE COURT: So I'll sustain that objection.

8 BY MR. GEORGE:

9 Q And would it be fair to say that you weren't thrilled
10 with the arrangement that was ultimately reached with the
11 unsecured creditors?

12 A That would be a fair characterization.

13 Q And you feel that you overpaid the unsecured creditors
14 under the plan, right?

15 A Correct.

16 Q Now Ms. Magee said you were there until eleven o'clock
17 at night. Were you there until eleven o'clock at night?

18 A That's not true. It -- it was a long day, but we were
19 out by 8, 8:30, at the latest.

20 Q And this document had already been signed up by 8.

21 A Correct, the last hour it took for everybody to --
22 attorneys to get their last pieces.

23 Q So the ultimately deal was made some time before 8, an
24 hour or so before?

25 A Yeah.

1 Q Not at eleven o'clock at night?

2 A Definitely not 11, no.

3 (Participants confer)

4 Q And you mentioned the other financial benefits that
5 Dalmatia got by virtue of the fact that these injunctions
6 were in existence with respect to the debtor. Do you have
7 any idea or can you quantify in any way the actual amount of
8 the economic benefit to Dalmatia?

9 MR. KIZNER: Your Honor, I object. This is totally
10 speculative.

11 THE WITNESS: No, I --

12 THE COURT: Well, hold -- you have to wait -- when
13 you hear an objection, Mr. Thompson --

14 THE WITNESS: Okay.

15 THE COURT: -- you need to wait.

16 THE WITNESS: I'm sorry.

17 THE COURT: I think you need to lay a foundation as
18 to how he would know what the benefits were. Maybe he could
19 know it, but I think you have to have a preceding question.

20 So I'll --

21 BY MR. GEORGE:

22 Q So can --

23 THE COURT: -- sustain --

24 Q -- you tell us --

25 THE COURT: -- the objection.

1 Q -- the Court what you view as the benefits that Dalmatia
2 derived economically from the injunctions?

3 A It slowed down their competitor FOODMatch, and it --
4 well, there's -- and that's documented in sales tracking
5 data, retail tracking data that's given by independent
6 sources.

7 Q And I think your testimony was that it would -- that the
8 debtor would have met it or would have had revenue in excess
9 of expenses of about a half a million dollars by virtue of
10 that?

11 A Yeah, I think it's probably closer to seven hundred, but
12 yeah.

13 Q Did you take any effort to make yourself judgment-proof
14 after you entered into this settlement agreement?

15 A No.

16 Q Now the debtor agreed to \$1,758,871 as the claim. What
17 -- how is that claim quantified?

18 A They -- that actually I think is why this document took
19 a couple of months to prepare because they had to go back and
20 balance out what they had paid -- FOODMatch had paid of the
21 7.4 million and net things out. And I don't understand --
22 that's all I know. I know it had something to do with the
23 total claim and the joint and severable, I think is the term.
24 And so they had to -- they had to cover their base.

25 And yes, at one time, we were in joint and severable of

1 -- and this, I think, is public knowledge. The judgment was
2 well over -- it was 4.4 million. So I guess the joint would
3 have been 2.7 million because they came back at 1.7, so I --
4 it's math that they did on their side. I was not a party to
5 it, and there was definitely no concessions there. It was --
6 it was because of the legal judgment that the number came
7 down to 1.7 from --

8 Q And do you know whether this number includes her
9 recovery of any of the attorneys' fees that she incurred?

10 A I don't believe it did because I think that was covered
11 by the other agreement that I do not know anything more
12 about, other than that I believe there was some --

13 Q So you don't know whether, in the settlement with
14 FOODMatch, attorneys fees were paid as part of that amount?

15 A -- I don't know the particulars of that agreement, no.

16 Q Okay. Did the debtor then take that number and do an
17 accounting of it and try to get to the bottom of how it was
18 arrived, or did the debtor accept that number without
19 contest?

20 A We accepted it without contest.

21 (Pause in proceedings)

22 A If I could just add, we had asked, and both FOODMatch
23 and Dalmatia said no way were we going to get any kind of an
24 accounting or math. They both -- it's not just Maia's
25 conviction, but it was also FOODMatch's conviction that

1 nothing wold be disclosed from that agreement.

2 Q So you don't know the full contents of the FOODMatch
3 settlement?

4 A I -- I -- you know, and it would be speculation. I know
5 what Dalmatia did not accept because I was in the room for
6 that, and I know where that was, so I would imagine --

7 THE COURT: Well let's not --

8 A -- what the final --

9 THE COURT: -- go there.

10 A -- was, north --

11 THE COURT: You don't --

12 MR. GEORGE: That's fine, Judge.

13 THE COURT: You don't know what they actually
14 accepted.

15 MR. GEORGE: That's all I --

16 THE COURT: It doesn't matter what they didn't
17 accept.

18 THE WITNESS: Yeah.

19 MR. GEORGE: I don't have anything further for this
20 witness.

21 THE COURT: Cross-examine?

22 MR. KIZNER: Can we have a three-minute break, Your
23 Honor?

24 THE COURT: Sure. Take a three-minute recess.

25 (Recess taken at 1:07 p.m.)

1 (Proceedings resume at 1:16 p.m.)

2 (Call to order of the Court)

3 (Witness resumes stand)

4 THE COURT: All right. Mr. Kizner, are you ready
5 to go?

6 MR. KIZNER: Yes, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. KIZNER:

9 Q Mr. Thompson, do you recall earlier today, a few minutes
10 ago, you testified that you never used Dalmatia's recipe? Do
11 you recall that in your testimony?

12 A Yes.

13 Q So that's -- you're saying you never used Dalmatia's
14 test -- recipe.

15 A We used the recipe that we developed for Dalmatia to
16 produce Dalmatia, but we never used it to produce any other
17 product.

18 Q You -- for the record, you were found liable, your
19 company was found liable at trial for misappropriation of
20 Dalmatia's trade secrets, right?

21 A You know, we -- okay.

22 Q It's a --

23 A What -- okay.

24 Q -- yes-or-no question.

25 A What's your question? Okay. To some extent, yes.

1 Q Okay. You also testified earlier -- we talked about the
2 one-year injunction. Do you recall that?

3 A Yes.

4 Q October of 2012 to -- I'm sorry. October 2018 -- '17 to
5 October 2018, right?

6 A Correct.

7 Q And you testified that you couldn't supply FOODMatch for
8 the holidays at 2017, 2018 holiday season.

9 A That's correct.

10 Q And that's as a result of the injunction. Is that your
11 testimony?

12 A That's my testimony.

13 Q Isn't it true that fig -- that FOODMatch fig spread was
14 in the stores and readily available during the 2017/2018
15 holiday season?

16 A It was available, but at a limited inventory because of
17 -- they had to switch to a different production.

18 THE COURT: But is that a different producer, not
19 you?

20 THE WITNESS: That's correct.

21 THE COURT: Is that what you mean?

22 THE WITNESS: That's correct. It --

23 THE COURT: All right.

24 THE WITNESS: On the bottom, it has -- it says
25 Greece as the place of origin.

1 BY MR. KIZNER:

2 Q So it didn't say USA on it; you're saying it said Greece
3 on it?

4 A A product of Greece, yes.

5 Q But that -- so -- but there was product available,
6 correct?

7 A You know, that's -- that's not -- I -- I did not check
8 all the stores. I only know what they told me, that they had
9 limited supply. That's correct.

10 Q But you said there was a gap in the supply, and now what
11 you're telling me, that they switched to a different
12 supplier, so that's not correct; there was not a gap in the
13 supply.

14 A No, I --

15 Q You testified to that earlier.

16 A I -- I believe I'm being straight when I say that we had
17 orders, we stopped making those orders based on the
18 injunction, and they had to switch to a producer in Greece.
19 And Greece takes a longer lead time, it takes --

20 Q So --

21 A Not only was --

22 Q So --

23 A Excuse me. I'm not --

24 THE COURT: Let him finish his answer.

25 A Yeah. So, when they switched to Greece, it took some

1 time to get the jars and the labels. And yes, they had a
2 limited -- their inventory was limited. They only said that
3 it hurt them, I don't know to what extent or anything other
4 than that. I was only told that it hurt.

5 Q So your testimony earlier about the gap in the supply,
6 that's completely speculative.

7 A It's not speculative, it's what I was told by the
8 customer.

9 MR. MASCHMEYER: Your Honor, I'm going to object.
10 What relevance is this on FOODMatch not being able to --

11 THE COURT: Overruled. You brought it up.

12 MR. MASCHMEYER: Well, no --

13 THE COURT: He's exploring it.

14 MR. MASCHMEYER: -- I brought it up that it hurt
15 the debtor not being able to produce it. If FOODMatch --

16 THE COURT: It all --

17 MR. MASCHMEYER: -- had to go somewhere else, what
18 relevance is that to this?

19 THE COURT: Because the subject of hurting
20 FOODMatch has also been brought up at times as part of
21 Dalmatia's interest.

22 (Participants confer)

23 MR. KIZNER: So --

24 THE COURT: I'm not saying that it's particularly
25 relevant; I'm just saying that, if one side gets to explore

1 the issue, I'm going to let the other side explore the issue,
2 that's all.

3 MR. MASCHMEYER: I understand.

4 BY MR. KIZNER:

5 Q So the recipe, Dalmatia's recipe, FOODMatch just took it
6 to Greece to have it produced there, right?

7 MR. GEORGE: Objection, Your Honor.

8 THE COURT: Sustained. That's as far as he knows.

9 (Participants confer)

10 THE COURT: I don't know where else you want to go
11 with this.

12 MR. KIZNER: Sure.

13 BY MR. KIZNER:

14 Q Do you recall being at the confirmation hearing on
15 September 17th of this year?

16 A Yes, I do.

17 Q Okay.

18 A Some of the -- some of them, I was not physically here,
19 but that one, I was.

20 Q Okay.

21 A Yes.

22 Q And do you remember putting a proffer on the record that
23 day, on September 17th?

24 A I'm sorry, I don't know what that means.

25 Q Do you remember putting -- do you remember testifying

1 about your financial -- the financial ability of the debtors
2 that day, on September 17th?

3 A I -- if you can be more specifics. I'm not sure what
4 you're asking.

5 Q Well, you testified on September 17th that, if Dalmatia
6 is successful at today's hearing on its objection, that the
7 debtors would pay Dalmatia the same as all other unsecured
8 creditors. Do you recall that?

9 MR. GEORGE: Your Honor, it -- that's beyond the
10 scope of the direct, I believe. There wasn't any testimony
11 about that.

12 THE COURT: I'm going to allow it. We can just
13 call him back on rebuttal, it's not worth it.

14 MR. GEORGE: Understood.

15 THE WITNESS: Yeah, all I was stating is that I
16 would abide by what the Court says. Any additional spending
17 by my company -- I don't have 3 employees or 1 employee; I
18 have 72, so it's -- it's impactful, it's painful.

19 BY MR. KIZNER:

20 Q Is it fair to say -- just based on your testimony
21 (indiscernible) is it fair to say you don't recall what you
22 said at the confirmation hearing on September --

23 A No, I -- I -- I do remember. Now that you brought it
24 up, I -- the question -- I think -- well, I think it
25 pertained more about could this go forward one way or the

1 other, depending on this hearing, and I feel that it can, but
2 most difficultly. I mean, it's a painful process --

3 Q So do --

4 A -- with what I've gone through.

5 Q Do you recall specifically the testimony you made about
6 Dalmatia's claim at the hearing on September 17th?

7 A I do not remember --

8 Q Okay.

9 A -- what I said specifically about that hearing -- or
10 their claim.

11 MR. MASCHMEYER: Your Honor, I'm only going to
12 object to clarify the record. I believe confirmation was
13 September 6th, not the 17th, so ... okay.

14 BY MR. KIZNER:

15 Q Okay. Do you have the settlement -- do you have the
16 settlement agreement in front of you?

17 A Yes.

18 Q Okay. I'm going to refer you to the handwritten
19 settlement agreement, which is start -- it starts at Page 8,
20 on the top. Do you see it?

21 A (Witness reviews exhibit)

22 Yeah.

23 Q Okay. And you testified earlier that you were at the --
24 at this settlement conference on October 12th, 2017, right?

25 A Yes, I was.

1 Q Okay. You said it was about ten hours?

2 A Ten, eleven hours. I know I got home that evening
3 before midnight, and I live two hours away.

4 Q Okay. And who put the provision in the third paragraph
5 -- who added the provision in the third paragraph about --
6 that says "at least ten percent"? Do you see that there,
7 that provision? Do you recall who actually put that
8 provision into this handwritten agreement?

9 A I'm not sure whose handwriting that is.

10 Q You're not sure whose handwriting it is? Do you even
11 know who wrote this agreement?

12 MR. GEORGE: Are you talking about the handwritten
13 agreement?

14 MR. KIZNER: Yeah.

15 THE WITNESS: I think it was the Judge's
16 handwritten agreement.

17 BY MR. KIZNER:

18 Q Do you know if it was -- do you know if any of the
19 lawyers wrote the agreement?

20 A The lawyers were very much involved in it. They did --

21 THE COURT: He's asking specifically about the
22 writing, the pen to paper, right?

23 MR. KIZNER: Yeah.

24 THE COURT: Is that the question?

25 BY MR. KIZNER:

1 Q Do you know if any of the lawyers actually -- I only
2 want to find out who wrote this.

3 A I --

4 MR. GEORGE: Well, Judge, just -- when he keeps
5 saying who "wrote," I mean, is he asking who the scrivener
6 was?

7 THE COURT: That's what I'm trying to get to.

8 MR. KIZNER: Yes. I'm asking who's the scrivener,
9 exactly.

10 THE COURT: Whose hand was -- held the pen to put
11 the words on the paper.

12 (Laughter)

13 THE COURT: If you know.

14 THE WITNESS: I cannot say with 100 percent
15 accuracy.

16 MR. KIZNER: Okay.

17 THE WITNESS: I think it was the Judge, but I don't
18 -- I would not -- you know, it's not something I'd swear to
19 on a Bible.

20 BY MR. KIZNER:

21 Q Okay. And is it fair to say you have no recollection of
22 there being any discussion about bankruptcy at this
23 settlement conference?

24 A No, there was discussion about bankruptcy.

25 Q Do you know why this handwritten addition at the end of

1 Paragraph 3 was added?

2 A I -- I know what the intentions were.

3 Q Okay. So you were -- so let me get this straight. You
4 didn't draft this, right? And you don't know who drafted it,
5 you don't know who wrote it.

6 A It was a collaborative work between my attorney and
7 Maia's attorney and me and Maia, and I believe the Judge
8 actually handwrote it.

9 Q Okay. So somebody added -- it looks like somebody
10 added:

11 "-- but will support a plan, as long as it pays out
12 at least ten percent."

13 I'm just trying to read the handwriting.

14 A Right.

15 Q Do you recall even reading that, that day?

16 A Yeah, yeah.

17 Q Okay. You recall --

18 MR. GEORGE: Your Honor, can we have an offer of
19 proof? What does it matter who wrote it? It says it's going
20 to be memorialized in a separate agreement, which is the
21 writing that is typed and then filed with the Court for
22 approval. So what does it -- who cares who wrote it? She
23 signed it, he signed it, everybody agreed to it.

24 THE COURT: Overruled.

25 BY MR. KIZNER:

1 Q So is it -- it's your position here today that, as long
2 as Dalmatia receives ten percent, no matter what, it has to
3 agree with the plan, right? Isn't that your position?

4 A My position was that this was a multi-prong agreement.

5 Q I'm asking you what your position today is.

6 MR. GEORGE: Your Honor, can he answer?

7 A You asked me --

8 MR. GEORGE: It's cross.

9 A -- what my --

10 THE COURT: I think he -- actually, I think he is
11 trying to answer your question, I hope. I'll let you finish
12 your thought. Go ahead.

13 THE WITNESS: Okay. Yeah, it was not a financial-
14 only -- I mean, this -- this agreement had several different
15 potential outcomes at the end, but it -- it had to -- it
16 incorporated Ms. Magee's very important to her injunction, so
17 that -- for her competitive reasons, and some financial
18 reparations. And her concern was that we would go to zero,
19 her -- give unsecured -- only the secured creditors would get
20 money, and unsecured would get zero, and she wanted ten
21 percent.

22 BY MR. KIZNER:

23 Q Okay. So your position -- and I think you just answered
24 the question at the end -- is that Dalmatia agreed to accept
25 ten percent.

1 A And the injunction or --

2 Q I'm just talking about the --

3 A No, I -- I'm finishing.

4 Q -- that one clause.

5 A The -- this -- no, this clause is not -- you can't pull
6 it out and say that that was that the agreement. The
7 agreement was: A, pay a lump sum; or, B, do the injunction
8 and pay this amount of money, pay the ten percent.

9 Q Okay.

10 A And at that point, I -- you know, the ten percent I
11 thought was going to be a little over 200,000 because of the
12 number, but they came back and said the number was 1.742,
13 which brought the ten percent down to a hundred and seventy-
14 four.

15 Q So the handwritten agreement -- so you just testified
16 your understanding was that Dalmatia would accept just ten
17 percent. That's what you just said, right?

18 A I think what I said is it's clear and it was multi-
19 pronged.

20 THE COURT: But as to this issue. I get that
21 you're saying it's connected to other parts of the agreement,
22 that it's all a unified agreement.

23 THE WITNESS: Yeah.

24 THE COURT: But on this provision --

25 THE WITNESS: Ten per --

1 THE COURT: -- he's asking you do you -- did you
2 understand this to mean that Dalmatia, if it got ten percent,
3 had to support the plan?

4 THE WITNESS: That is correct.

5 THE COURT: Okay. That's a simple answer.

6 BY MR. KIZNER:

7 Q So, in the handwritten agreement, the language says at
8 least -- "pays out at least ten percent," in the handwritten
9 agreement. You can look at it in front of you. Is that --

10 A Yeah, I've seen it.

11 || Q Right?

12 A Yes.

13 Q And then, a few months later, there's this typed
14 agreement which further memorialized the terms. And that
15 agreement says -- and you can look at it, that's on Page 1.
16 It says "as long as it pays out at least ten percent." I
17 mean, you can look at the two -- the language is verbatim,
18 but if you can look at the two, if you want to --

19 A Okay.

20 Q -- see them side by side.

23 MR. KIZNER: Okay.

24 THE COURT: It's been faithfully typed into -- onto
25 the first page of the settlement agreement.

1 BY MR. KIZNER:

2 Q So, if it was supposed to be only ten percent, how come
3 the agreement didn't say only ten percent? It says "at
4 least."

5 A But it was at least from the other direction, from zero.
6 She -- the concern in our discussion in that -- in that
7 conference and when Ms. Magee and I went to the other room
8 was that -- she said, we're going to get zero, and I said, it
9 could be, could be zero.

10 Q You would agree this clause --

11 MR. GEORGE: Your Honor, can he --

12 Q -- is on --

13 THE COURT: Let him --

14 MR. GEORGE: -- finish his --

15 THE COURT: Let him --

16 MR. GEORGE: -- answer?

17 THE COURT: -- finish his answer.

18 THE WITNESS: And -- and I said, it could be zero,
19 it could be five percent. She says, well, I want to make
20 sure I get ten percent. And -- and -- and I said okay, we'll
21 make sure you get ten percent, and if I give ten percent it,
22 you will approve it. She said yes. As -- and she says, and
23 you know, the injunction is very important to me, I need the
24 injunction, and we need to have proof of the injunction. And
25 I -- and we get an open door, they can come in any time. So

1 those two pieces together gave her -- you know, that's what -
2 - that's what the agreement was, that's what I agreed to.

3 Q So you would agree that this language is not clear
4 because it doesn't say just ten percent. You'd have to agree
5 with that, right? It says "at least ten percent."

6 A It's clear to me because I was there, and I know what
7 was being stated and what her intentions were.

8 Q Just focusing --

9 A Her intentions --

10 Q -- on this clause --

11 MR. GEORGE: Your Honor --

12 Q -- you would agree --

13 A (indiscernible)

14 MR. GEORGE: -- again, he's --

15 Q -- that's not --

16 MR. GEORGE: -- interrupting him.

17 MS. MAGEE: Yes or no.

18 THE COURT: Let him finish his answer, please.

19 THE WITNESS: Yeah, my -- her intentions and my
20 intentions were, at the end of the day, she was going to get
21 the equivalent of a number. That number was either going to
22 be a lump sum or this ten percent, plus what I felt that
23 value of that injunction was to me as a company.

24 MR. KIZNER: Okay.

25 THE WITNESS: And I can tell you that, if you pull

1 away the black there, that number is exactly -- it came out
2 to the penny, almost, as to the cost of the injunction to me
3 and the two hundred (indiscernible) to me, it was a wash.

4 BY MR. KIZNER:

5 Q But you never -- that number was never paid, right?

6 A It didn't have to be.

7 Q Would you agree the language is not clear? That's what
8 I want to ask you. Would you agree --

9 MR. GEORGE: Your Honor --

10 Q -- the language --

11 MR. GEORGE: -- he just answered.

12 Q -- is not clear?

13 A I --

14 MR. GEORGE: That's been asked and answered.

15 MR. KIZNER: He's not answering it, he's --

16 MR. GEORGE: He did. He said, it's clear to me
17 because I was there. That was his answer.

18 THE COURT: I'll sustain the objection.

19 BY MR. KIZNER:

20 Q Let's move on to the next page. In Paragraph 3 --

21 MR. GEORGE: Which document are you on, the written
22 or the --

23 MR. KIZNER: Document 306, Page 3.

24 MR. MASCHMEYER: Which number at the top of that
25 document?

1 THE COURT: Second page of D-1.

2 MR. GEORGE: Thank you, Judge.

3 MR. MASCHMEYER: Thank you.

4 THE WITNESS: But he's going by the page at the
5 top. Is it 3 of 5 or 4 --

6 MR. KIZNER: 3 of 15.

7 THE WITNESS: 3 of 15.

8 MR. MASCHMEYER: 15.

9 THE WITNESS: Okay.

10 (Witness reviews exhibit)

11 BY MR. KIZNER:

12 Q If you look down to the third paragraph, there's a
13 discussion about bankruptcy there. Do you see that?
14 "Dalmatia will amend its claims." I just want to direct you
15 to that paragraph.

16 A Not -- Item 3, not the third paragraph, "Dalmatia."

17 (Witness reviews exhibit)

18 Correct. That is -- I see it.

19 Q Okay. So isn't it true that you agreed in the
20 settlement that the amount of the claim would be fixed at 1.7
21 -- a hundred -- \$1,758,871? That's the number?

22 A No. That number was supplied by Dalmatia counsel six
23 weeks later, after they figured what the number really was.
24 It -- we didn't have that number that day.

25 Q Did you enter into the settlement agreement?

1 THE COURT: Let's clarify. He's talking about --
2 we're you're talking about two different points in time, so
3 let's just be clear. There's the day that the handwritten
4 agreement was made, and then there's the day that the typed-
5 up agreement was executed. So ask your question in relation
6 to those dates.

7 BY MR. KIZNER:

8 Q Okay. The day the -- the day the typed-up agreement was
9 entered into, the parties agreed that the amount of the
10 unsecured claim would be \$1,758,871. Is that correct?

11 A That is correct.

12 Q Okay. And the debtors agreed they would not -- that
13 would be a fixed number, they would not -- it would be valid,
14 they would not challenge that claim, correct?

15 A Nor have we.

16 Q And you -- and you said it was an allowed unsecured
17 claim, right?

18 A Correct.

19 Q There was never any discussion about different classes
20 of unsecured claims, was there?

21 A I'm -- well, I'm -- what's your question? I'm not sure
22 what your question is.

23 Q Well, the agreement doesn't contain any language about
24 there being different classes of unsecured claims, correct?

25 A I think it's -- the document stands by itself.

1 Q Okay. So, in the confirmed plan, every other unsecured
2 creditor but Dalmatia is receiving somewhere between 39 to 50
3 percent of its claim. Isn't that right?

4 MR. MASCHMEYER: Wait.

5 MR. GEORGE: Objection to form, Judge. There are
6 at least seven classes in there. Fox Rothschild is in its
7 own class.

8 MR. KIZNER: I can prefer -- I can refer to the
9 specific classes. I'm just trying to speed it up. But if
10 you want, I can -- I'll --

11 MR. GEORGE: I mean, Judge --

12 THE COURT: Well --

13 MR. KIZNER: I'll mark the --

14 MR. GEORGE: -- can't we stipulate that the plan
15 says what it says, and if there's an amount being paid --

16 THE COURT: Well, but he wants to get at the fact
17 that there is a class of unsecured creditors that probably
18 consists of most of the unsecured creditors in the case, who
19 are getting 39 percent and possibly more. That's what you're
20 trying to establish, right?

21 MR. KIZNER: Correct.

22 THE COURT: And I don't think that's in dispute, is
23 it?

24 MR. GEORGE: That's what I'm saying.

25 THE COURT: Okay. So that's --

1 MR. GEORGE: That's why I don't know why --

2 THE COURT: That's the foundation to what his next
3 question is.

4 So, if -- and you agree with that, right? You
5 understand there's a lot of creditors getting 30 -- possibly
6 39 percent or more, and Dalmatia is not one of them, right?

7 THE WITNESS: That's correct.

8 THE COURT: Okay. What's your next question about
9 now?

10 BY MR. KIZNER:

11 Q So isn't -- you agree that -- to not challenge the claim
12 in the settlement agreement, Dalmatia's claim, right? As an
13 unsecured creditor.

14 A That's what I agreed to, yes.

15 Q By treating it as a totally separate class of unsecured
16 creditors, aren't you just effectively challenging the claim?

17 MR. GEORGE: Your Honor, I object.

18 THE COURT: Sustained.

19 MR. GEORGE: That's a legal --

20 THE COURT: Sustained.

21 (Participants confer)

22 BY MR. KIZNER:

23 Q Are you aware of the difference of how much money
24 Dalmatia would receive if it's treated like all the other
25 unsecured creditors?

1 A I am.

2 Q Okay. Do you know the difference of what it would
3 receive if it's treated in its own class, as in the plan?

4 A Less than the value of the injunction.

5 Q Do you know the number?

6 A I -- I think it's about \$450,000.

7 Q Okay.

8 A And it's less -- and that's why I think it's -- all the
9 numbers tie together. It's -- the injunction is what it is.
10 I lived through it, I incurred that cost, and it was painful.
11 It was painful for me and my company. And so that's already
12 been paid to -- to Dalmatia. And -- and so Dalmatia's claim
13 on this -- you know, has already paid, and I think you're
14 asking --

15 Q What's been paid to Dalmatia? Has a penny gone to
16 Dalmatia? Yes or no. Has a penny gone to Dalmatia?

17 A It has, indirectly, through the -- through living
18 through the injunction. It gave them commercial benefit in
19 the marketplace, which was important to Ms. Magee, and that's
20 why she -- that was so important to her in our negotiations.

21 Q That's your belief.

22 A Oh, it's fact.

23 Q All right.

24 A You know, I've been in commercial and retail says for 30
25 some years. You know, I knew what she was trying to do, and

1 for me, it was kind of a wash.

2 THE COURT: Can I ask a question on that point?

3 MR. KIZNER: Sure.

4 THE COURT: You've quantified in your testimony the
5 effect of the injunction. At one point, I think you said it
6 cost you 500,000 in sales, and later you said as much as
7 seven hundred.

8 THE WITNESS: No, in -- not in sales. In sales, it
9 was --

10 THE COURT: In -- I'm sorry. Not in sales. In
11 basic profit.

12 THE WITNESS: Profit and --

13 THE COURT: Net cash flow, net cash flow --

14 THE WITNESS: Net cash flow.

15 THE COURT: -- was the word you used.

16 Okay. I don't -- you have to help me with this.

17 How does that translate into a benefit to Dalmatia, that you
18 lose money? Why does that mean there's a benefit to
19 Dalmatia? And if there is one, how do you quantify that and
20 why are you assuming it's dollar-for-dollar?

21 THE WITNESS: What -- what that did, as far as
22 increasing the purchase price for FOODMatch and, by
23 disrupting their business, it allowed her sales to increase,
24 and that -- and not be --

25 THE COURT: It was -- which is a business

1 opportunity, correct?

2 THE WITNESS: A business opportunity was created by
3 impacting the sourcing of their competitor.

4 THE COURT: But do you have any data to quantify
5 what benefit Dalmatia got from that business opportunity?

6 THE WITNESS: Yes, there's -- there's Nielsen data
7 that I was shown that showed that their -- that the FOODMatch
8 growth stopped, and actually decreased --

9 MR. KIZNER: Your Honor --

10 THE WITNESS: -- during that period.

11 MR. KIZNER: -- this is all hearsay.

12 THE COURT: But what -- but that -- but how does
13 that put increased revenue into Dalmatia?

14 THE WITNESS: Because they were not -- they didn't
15 have --

16 THE COURT: They had --

17 THE WITNESS: -- competitors on the shelf.

18 THE COURT: You're assuming that they can jump into
19 the void and get the entire benefit of the vacuum that's
20 created by FOODMatch's withdrawal from the market. Why do
21 you assume that? Why is that -- why should I assume that?

22 THE WITNESS: Because it's -- it is how this
23 particular market operates in --

24 THE COURT: There's no --

25 THE WITNESS: -- in chief.

1 THE COURT: -- other competitors --

2 THE WITNESS: There are --

3 THE COURT: -- for Dalmatia?

4 THE WITNESS: -- other competitors, but the two of
5 them are represented by the two largest cheese distributors
6 and control the deli sets. It's FOODMatch and the company
7 that Dalmatia left FOODMatch for at Atlanta. So it's those
8 two companies fighting at retail --

9 THE COURT: Okay.

10 THE WITNESS: -- in these key periods of time.

11 THE COURT: So, whether it's right or wrong, your
12 perception is there's a direct dollar-for-dollar correlation
13 between your -- the losses that you've described in net cash
14 flow --

15 THE WITNESS: Uh-huh.

16 THE COURT: -- and what you presume would be an
17 increase in net cash flow in an equivalent amount to
18 Dalmatia. That's basically your theory.

19 THE WITNESS: I think it is that or more.

20 THE COURT: Okay.

21 THE WITNESS: And it was very important to her
22 because she -- I mean, she repeated it, she wanted those
23 sales during that period of time and she wanted to hurt
24 FOODMatch --

25 THE COURT: Okay.

1 THE WITNESS: -- and that's the way she could do
2 it.

3 THE COURT: I understand.

6 MR. KIZNER: That's fine, Your Honor.

7 BY MR. KIZNER:

8 Q You testified earlier that you -- that due to the
9 injunction, the one-year injunction, that the debtors
10 incurred a loss of somewhere between five hundred to 800,000.
11 Is that what you testified to?

12 A I think --

13 THE

14 0 Seven?

15 A Thin

16 Q. So, if you sustained such a large loss like

17 why would you not have just paid under the judgment to get
18 rid of the injunction?

19 A To me, it was like a wash. I didn't have the free cash
20 flow to pay it up front. To me, if I would have been -- if I
21 would have paid it, I would have rather maintained that
22 relationship and keep my people working and keep the factory
23 going. You know, we -- you know, it was painful for us, but
24 -- I had filed bankruptcy. I didn't have 700,000 sitting
25 there at the time, so I -- so I incurred that five -- you

1 know, forty or 50,000 of pain a month for 12 months.

2 Q And you just said you filed bankruptcy. But the
3 settlement agreement was entered into after you filed
4 bankruptcy.

5 A It -- correct. I was hoping to raise the money and just
6 keep it going. I couldn't raise the money, so I incurred the
7 losses. It was -- it was an either/or, as far as my -- I
8 would have preferred to pay her off and not -- and quite
9 honestly, I -- she's a litigious person. I wanted to just
10 eliminate having to see her in a courtroom again, that's what
11 this thing did.

12 Q Sure.

13 A But I didn't -- didn't have the 700,000, so I had to
14 suck it up the other way. This contract allowed it to go A
15 or B.

16 Q So you testified earlier that your understanding was
17 that Dalmatia would take only ten percent, right?

18 A And be happy to get it.

19 Q Correct.

20 Do you recall --

21 A With the injunction.

22 Q Do you recall what the first three versions of the plan
23 provided for, in terms of Dalmatia's treatment?

24 A I think I heard today that -- you know, none of those
25 went anywhere, and we were just -- it was just a starting

1 point, but it had nothing to do with this.

2 THE COURT: That's not what he asked you.

3 A Fifteen.

4 THE COURT: Thank you.

5 Q Do you recall seeing any of these three versions of the
6 plan that had 15 percent in them?

7 A Correct. Yes, I did.

8 Q So you approved it, presumably; you reviewed it and
9 approved it?

10 A It was preliminary and there was really -- there was no
11 discussions going on at the time.

12 Q So, at three separate occasions, you agreed to give
13 Dalmatia more than ten percent in this Bankruptcy Court.

14 MR. GEORGE: Objection, Your Honor. That calls for
15 a legal conclusion. Those plans aren't binding until they're
16 confirmed.

17 THE COURT: Well, the --

18 MR. KIZNER: I can rephrase it.

19 MR. GEORGE: There's no agreement --

20 THE COURT: I'll sustain it, but let's just agree
21 that on -- that it's not a disputed fact that, on three
22 separate occasions, the debtor proposed, through its
23 principal's authorization, proposed a plan that provided for
24 a 15 percent distribution to Dalmatia.

25 MR. GEORGE: Well, as long as it's stipulated that,

1 during that same time period, they entered into an agreement
2 that had ten percent in it.

3 MR. KIZNER: I'm not stipulating to that, Your
4 Honor.

5 THE COURT: If those are the facts, those are the
6 facts. It's not --

7 MR. GEORGE: Yeah, I think those --

8 THE COURT: It's not --

9 MR. GEORGE: -- are the facts.

10 THE COURT: What I just said is not conditioned on
11 what you just said.

12 MR. GEORGE: Understood.

13 THE COURT: There's -- unless somebody says
14 otherwise, there's no dispute that there were three plans in
15 which the debtor proposed 15 percent that were filed with the
16 Court. That's all he's asking.

17 MR. GEORGE: But for everybody, for all unsecureds.

18 THE COURT: Fifteen percent for everybody, correct.

19 MR. MASCHMEYER: Some people.

20 THE COURT: Let's not quibble about things that
21 aren't in dispute.

22 MR. GEORGE: Understood.

23 BY MR. KIZNER:

24 Q If Dalmatia was only supposed to receive ten percent, how
25 come it didn't say that in the agreement, only ten percent.

1 A I'm unsure.

2 Q Okay.

3 THE COURT: You know, he's answered that already.

4 (Participants confer)

5 THE COURT: He said it was from -- it was at least
6 ten percent because it was to go from -- make sure it was
7 above zero; he said that, I think twice already.

8 MR. KIZNER: Sure.

9 THE COURT: I don't think we need it a third time.

10 BY MR. KIZNER:

11 Q Regarding the judgments that were discussed earlier, you
12 never paid any of the judgments, right? The CO Nolt judgment
13 and the personal judgments, those are outstanding, correct?

14 A Correct.

15 Q Okay. So you've never paid any money to Dalmatia in the
16 Bankruptcy Court or outside the Bankruptcy Court, you or your
17 companies, correct?

18 MS. MAGEE: Cash.

19 MR. GEORGE: Your Honor, I'm going to object. What
20 time -- we're talking during the --

21 THE COURT: Also, I don't know who "you" is in that
22 question.

23 MR. KIZNER: Okay. I'll --

24 THE COURT: I'll sustain the objection to the form
25 of the question. Try it again.

1 BY MR. KIZNER:

2 Q Since October of 2017, CO Nolt has not paid Dalmatia any
3 -- any money, correct?

4 A CO Nolt was not even in operation. It has paid no
5 money.

6 THE COURT: Can you -- like it's a yes or a no
7 question. Why do you have to fight -- let me just put it in
8 some perspective. You're doing the same thing that Ms. Magee
9 does, that seven out of every ten witnesses I hear does.
10 Instead of answering the question, you try to explain why the
11 answer to the question is what it is because you think it's
12 unfavorable. Just answer the question. Your attorney can
13 ask on --

14 THE WITNESS: Okay.

15 THE COURT: -- redirect examination for you to
16 clarify. Otherwise, we spend all this time quibbling over
17 whether you're answering a question, and it's -- and you can
18 tell I'm getting frustrated by this, at this point.

19 BY MR. KIZNER:

20 Q Since October 2017, you never paid anything to Dalmatia,
21 personally.

22 A No.

23 Q And since October 2017, the debtors never paid anything
24 to Dalmatia, correct?

25 A Correct.

1 Q And your position here today is it's fair an equal
2 treatment to pay Dalmatia 10 percent, while other unsecured
3 creditors get up to 50 percent?

4 A I believe that this agreement was fair to Dalmatia, yes.

5 MR. KIZNER: Okay. No further --

6 THE COURT: That's it?

7 MR. KIZNER: -- questions, Your Honor. Yeah.

8 THE COURT: I just have a couple of questions.

9 EXAMINATION

10 BY THE COURT:

11 Q I just want to clarify in my mind the role FOODMatch
12 plays in all of this. If I understood Ms. Magee's testimony
13 correctly, in the good old day, when everybody was getting
14 along, Dalmatia was the owner of the product, the debtors
15 actually fabricated the product, and FOODMatch was the
16 exclusive distributor of the product for Dalmatia. That's, I
17 think, what Ms. Magee said. Does that sound right to you?

18 A That's correct, except maybe in Canada. I --

19 Q All right. Well, let's just -- we can stay in just the
20 United States for now. Okay.

21 Once there was a falling out, and then, as a result of
22 the settlement, how did the parties then align? What role
23 was FOODMatch playing by that time? That's the part I don't
24 understand entirely.

25 A We -- we were --

1 Q They stayed as a distributor for you. Is that right?

2 A No, no. They -- it's not a distributor for us. They
3 developed their own brand of fig jam, and we produced it for
4 them.

5 Q Oh, okay.

6 A They -- they don't distribute our products, they only
7 produce their products.

8 Q So they changed from being a distributor to actually
9 creating their own product.

10 A That's correct. And they -- and they --

11 Q And that's --

12 A -- do that for a lot of products.

13 Q And that was part of the reason that Dalmatia sued them?

14 A Correct.

15 Q Because they were doing that.

16 A Because of the competition.

17 Q And Dalmatia was claiming that the debtors did the same
18 thing.

19 A They're saying --

20 Q I'm not saying it's right. I'm saying that that was the
21 claim.

22 A They're claiming that we produced -- there were -- there
23 two issues: One was the ten truckloads that she canceled and
24 said we did -- I don't want any more --

25 Q One was a quality issue, right?

1 A But there was no quality issue.

2 Q Okay.

3 A But we sold those to FOODMatch, who was the distributor,
4 and that's what the original purchase order -- took those and
5 distributed those to the marketplace. They had put those
6 orders in, in good faith, in August, September, and they had
7 customers asking for it. It wasn't anything more than just
8 normal business. So that, under UCC law, is allowed. Under
9 trademark law, I came to find out it was not allowed, and I
10 had legal advice that said I was good to go, so -- to
11 mitigate the cost.

12 The second issue was Dalmatia claimed that we were using
13 their formula for making the new Divina product. Now --

14 Q And that was -- that product is your product or
15 FOODMatch's product?

16 A It was FOODMatch's product.

17 Q Okay. All right.

18 A And so we made -- they came back with a formula that
19 they had developed in Greece. It had 50 percent more figs,
20 less sugar, it had one █████, and it did not have Ms.
21 Magee's secret ingredient. But this one -- one of the jury
22 found against us and created an issue, and we just wanted it
23 to be over with.

24 Q All right. So let me go to the injunction now. If
25 there had been no injunction -- okay. Just take that

1 injunction out of the settlement agreement, and you could
2 have done those sales in that calendar year. Would FOODMatch
3 have played any role in your production or distribution?

4 A They would have bought -- bought that product and sold a
5 lot, and that business would have grown and --

6 Q Well, when you say they "buy" the product, they would --
7 they would contract with you to make the product --

8 A Correct.

9 Q -- and pay you to make their product. Is that --

10 A Correct. And compete --

11 Q Is that how it would work?

12 A And compete against --

13 Q And compete against --

14 A -- Dalmatia.

15 Q -- Dalmatia. And the injunction stopped you from doing
16 that.

17 A It interrupted their supply.

18 Q Okay.

19 A And it also made their supply more expensive when they
20 started to get it again because --

21 Q Okay.

22 A -- from (indiscernible) you don't have to deal with
23 tariffs, so ...

24 Q Now, at some point -- now exploring the details of the
25 terms -- FOODMatch -- which was part of the same litigation

1 that you were part of -- and by "you," I mean the debtors --
2 settled with Dalmatia. Everybody seems to agree with --
3 about that, right?

4 A Right.

5 Q Did the -- at the settlement discussions on October
6 12th, before Judge Smith, was there anything stated by any of
7 the parties present that would suggest one way or another
8 whether the settlement with FOODMatch had already been
9 reached, or that -- or not?

10 A It was -- it was reached in like June, early July '17.

11 Q So FOODMatch had already settled out by the time you got
12 to October.

13 A Right. And it was kind of prompted because of our
14 bankruptcy. It kind of made things start to happen.

15 Q Whatever the reasons are. Okay.

16 And so, if I'm following all the testimony, the
17 agreement in October, at that time, was simply that Dalmatia
18 could pursue its bankruptcy claim. But between October and
19 January, it was able to calculate the benefits it got from
20 the FOODMatch settlement, and then liquidate a number that
21 was still -- it considered still owing, and that was then
22 plugged into the January agreement, and you accepted that.
23 That's the 1.7 number.

24 A Yes.

25 Q But in October, you wouldn't have known -- that number

1 was unliquidated, you didn't --

2 A We knew it was in the range of 2 million, plus or minus.

3 Q All right. You had an estimate, but it wasn't firmed
4 up.

5 A Right.

6 Q So that -- am I describing the process correctly?

7 That's sort of how this all came about?

8 A That's --

9 Q Okay.

10 A -- that part, correct.

11 Q All right.

12 A See, the other part was that they had already reached the
13 agreement that FOODMatch was allowed to compete against them
14 in the marketplace with their own product, the fig jam. And
15 that's -- that was --

16 Q And that's why -- that's when the injunction kicks in --

17 A That's --

18 Q -- as being --

19 A That's why --

20 Q -- significant.

21 A -- it was so important to her because it was a
22 competitive advantage for her to get that injunction.

23 Q Okay. And one last thing. At one point, you tried to
24 bullet point the essence of the meeting of the minds, of the
25 agreement, and you said that, as you understood how you got

1 to a settlement with Dalmatia, it's because Dalmatia was
2 willing to accept either a lump sum of money or an injunction
3 and a ten percent distribution from the bankruptcy case.

4 A Yeah. And I think --

5 Q Is that --

6 A -- it would be --

7 Q Is that what you were trying to say earlier, basically?

8 A Yeah. It's clear, if you take that black off that
9 number, it makes it --

10 Q Okay. And in your mind, your testimony is that the
11 lump-sum number and the injunction, the value of the
12 injunction have an equivalent economic value.

13 A Exactly.

14 Q Okay. I understand your testimony, that's all I'm
15 trying to do at this point.

16 A I can give you more words.

17 Q What's that?

18 A I can give you more words.

19 Q No, thank you.

20 THE COURT: Okay. Redirect.

21 MR. GEORGE: I just have a couple, Judge.

22 THE COURT: Well, Mr. Maschmeyer would go first.

23 MR. MASCHMEYER: I'll let him go. I have nothing
24 at this point.

25 THE COURT: Okay.

1 REDIRECT EXAMINATION

2 BY MR. GEORGE:

3 Q There is a contribution that has to be made by the
4 principals of the debtor in connection with the confirmation
5 of the plan, right?

6 A Correct.

7 Q And can you tell the Judge how much that number is?

8 A Six hundred and fifty thousand.

9 Q And you had to try to collect that from your friends and
10 family?

11 A Yeah.

12 Q And you've gotten --

13 A And --

14 Q -- that money together to go effective with the plan?

15 A Is this for the Court or for you?

16 Q Well, let's hope parts for me.

17 A Yes. We --

18 Q And by the way, it was due about four weeks, but --

19 A Yeah, we've -- we've had it. There's been some
20 paperwork snafus, so ...

21 MR. GEORGE: That's all I have, Judge.

22 THE COURT: Okay. Any further cross-examination?

23 MR. KIZNER: Just -- does Mr. Maschmeyer --

24 MR. MASCHMEYER: I have nothing further.

25 THE COURT: He passed.

1 MR. KIZNER: Oh, sorry (indiscernible)

2 RECROSS-EXAMINATION

3 BY MR. KIZNER:

4 Q You testified a few minute ago that, at the -- that, by
5 the time of the October 2017 settlement conference, that
6 FOODMatch had already settled.

7 A That's correct.

8 Q But you don't know any of the terms of those -- of that
9 settlement agreement. You weren't a party to that, were you?

10 A I only -- I only know what I could see from outside.

11 They were allowed to continue to produce or -- I was
12 producing for them, so I know that they were allowed to
13 continue to sell their brand. And I know that was important
14 to them, and they confirmed that.

15 Q So --

16 A I don't know the financial arrangement.

17 Q So you have no personal knowledge of the financial
18 arrangement. That was my final question.

19 A Yeah, no financial arrangement. I don't know.

20 (Participants confer)

21 MR. KIZNER: That's all I have, Your Honor.

22 THE COURT: That's all you have?

23 Okay. Thank you, Mr. Thompson. Please step down.

24 (Witness excused)

25 MR. MASCHMEYER: Your Honor, we have no further

1 || witnesses.

2 THE COURT: Okay. The only other witness who was
3 going to be offered was Mr. Cianciulli?

6 MR. MASCHMEYER: We're not going to call him.

7 THE COURT: You've decided not to call him.

8 MR. MASCHMEYER: Yeah.

9 MR. GEORGE: So I think we can rest, right?

12 MR. MASCHMEYER: Rest, yeah. We rest, Judge.

13 || (Participants confer)

14 THE COURT: Mister --

15 MR. KIZNER: Something, Your Honor, just came up.
16 One of the -- one of the statements Mr. Thompson made was
17 apparently subject to the confidentiality provision; it was
18 actually one of the key terms. Can my client speak, since
19 she's --

20 THE COURT: Well, let's not --

21 MR. KIZNER: Just one statement was made.

THE COURT: Let's do that off the record.

23 MR. KIZNER: Okay. At least --

24 THE COURT: But not --

25 MR. KIZNER: -- that part.

1 THE COURT: But not now. Don't forget about it.

2 MS. MAGEE: Okay.

3 THE COURT: We'll come back to it.

4 I guess what I want to ask you is: Do you want to
5 put on any rebuttal evidence? Is there anything else you
6 want to cover with any -- with a witness?

7 MR. KIZNER: Yeah. Can we have five minutes, Your
8 Honor?

9 THE COURT: To decide that, do you mean?

10 MR. KIZNER: Yeah, to discuss it.

11 THE COURT: Okay. So -- all right. So let's go
12 off the record. But before you go and discuss that, let me
13 hear about the confidentiality.

14 MS. MAGEE: Oh.

15 (Off the record at 2 p.m.)

16 (Proceedings resume at 2:02 p.m.)

17 THE COURT: Off the record, Ms. Magee brought up a
18 concern that one particular phrase that came out in the
19 testimony recently revealed at least part of a trade secret
20 and requested it be redacted. I didn't hear anybody when we
21 were off the record objecting to my suggestion that, if and
22 when this hearing today is transcribed, that I will find a
23 mechanism to just redact that one phrase that created the
24 concern, which we all know about. But I also said that, if
25 we get to that point, I will expect the parties to do

1 something, file something, notify me in some way that -- to
2 remind me that I need to do that. So, with that --

3 MR. MASCHMEYER: On behalf of the debtor, we have
4 no objection.

5 MR. KIZNER: Your Honor, you also mentioned that
6 you wouldn't allow an electronic version of the record --

7 THE COURT: That -- right, I'm not -- that's
8 something that's under my control.

9 MR. KIZNER: Okay.

10 THE COURT: I'm not going to post the electronic
11 version of the record. And I don't consider it likely enough
12 to worry about, that some other party-in-interest in the
13 bankruptcy case would request a copy of this transcript,
14 since nobody else has really been participating for some
15 time. If that happens and anybody gets wind of that, and the
16 Court doesn't bring it to -- and we don't remember it here at
17 the Court, I'll need, again, somebody to take some action and
18 let me know.

19 MR. KIZNER: Yes, Judge.

20 THE COURT: All right. So we'll go off the record
21 for a couple of minutes while Mr. Kinzer decides if he wishes
22 to present --

23 (Recess taken at 2:04 p.m.)

24 (Proceedings resume at 2:20 p.m.)

25 (Call to order of the Court)

1 THE COURT: All right. Mr. Kizner, what have you
2 decided to do?

3 MR. KIZNER: We decided we're going to call Harvey
4 Grossman, the sales -- sales manager? Is that correct?

5 THE COURT: Okay.

6 MR. KIZNER: The sales manager, as a rebuttal
7 witness, Your Honor.

8 THE COURT: Okay.

9 THE COURT OFFICER: Please place your left hand on
10 the Bible and raise your right hand.

11 HARVEY GROSSMAN, WITNESS FOR THE MOVANT, SWORN

12 THE COURT OFFICER: Please be seated.

13 (Participants confer)

14 THE COURT OFFICER: Please state and spell your
15 name for the record.

16 THE WITNESS: Harvey Grossman, H-a-r-v-e-y, G-r-o-
17 s-s-m-a-n.

18 THE COURT OFFICER: May I have your address, Mr.
19 Grossman, for the record?

20 THE WITNESS: 1324 Round Pointe Drive, Haverstraw,
21 New York, 10927.

22 THE COURT OFFICER: Thank you.

23 MR. GEORGE: Your Honor, could we have an offer of
24 proof of what this witness?

25 THE COURT: No, let him just go ahead.

1 MR. GEORGE: Okay.

2 (Participants confer)

DIRECT EXAMINATION

4 BY MR. KIZNER:

5 Q Mr. Grossman, can you explain what your role with the
6 company is?

7 A I do -- I'm in charge of all the sales for Dalmatia.

8 Q All right. And earlier, Mr. Thompson testified about
9 Nielsen data. Are you familiar with that?

10 || A Yes.

11 Q What is Nielsen data. Because I don't believe it was
12 clear.

13 A Nielsen is -- is a -- the Nielsen Company does -- puts
14 together syndicated data, which they get from supermarkets.
15 When you scan something through the supermarket, it
16 registers. They are able to get all that data. And so it
17 registers sales through a register, rather than cases sold to
18 the warehouse. So that's the value of having Nielsen, or IRI
19 is another company.

20 Q So, during the year of the injunction, which was October
21 2017 to October 2018, were you reviewing Nielsen data around
22 that time frame?

23 A Yes. I had the end of year, which is December. Nielsen
24 is a fifty-two-week, rolling by month. So you're comparing -
25 - if you did -- if you had December of 2017 and compared it

1 to 2016, December, that's how they measure. So you could
2 have different months, and someone -- so, you know, you could
3 have different things happening. But the one that really
4 counts is the end of the year because that pretty much takes
5 the whole year into account. So I don't know what months he
6 was referring to. But I know the end of the year is what I
7 use because that's the one that counts.

8 Q And do you recall what FOODMatch's end of the year for
9 2017, what the Nielsen data showed, their sales?

10 A I don't know exactly, I don't remember that. But I do
11 know that they were up about 80 percent, and we were down.

12 THE COURT: I'm sorry. I didn't hear the number.
13 How much percent?

14 THE WITNESS: Eighty.

15 THE COURT: And which year are we talking about,
16 end of which year?

17 MR. KIZNER: End of --

18 THE WITNESS: The end --

19 MR. KIZNER: -- 2017.

20 THE WITNESS: -- of 2017. So our sales --

21 MR. GEORGE: Objection. This starts --

22 THE WITNESS: -- on the other hand --

23 MR. GEORGE: -- '17 to '18.

24 THE WITNESS: -- we were down because we had lost
25 distribution to FOODMatch, who had switched a lot of our

1 customers to them. So there was no way that we could be up,
2 and we weren't up, so it was inaccurate to say that we were
3 up --

4 THE COURT: Can I ask --

5 THE WITNESS: -- and they --

6 THE COURT: -- the obvious question?

7 THE WITNESS: -- they -- they weren't.

8 THE COURT: The end of 2017 was only two months
9 into the injunction.

10 MR. GEORGE: Right.

11 THE COURT: So wouldn't the end of 2018 be the more
12 significant --

13 THE WITNESS: No, well --

14 THE COURT: -- piece of --

15 THE WITNESS: -- they had --

16 THE COURT: -- information?

17 THE WITNESS: -- started to switch with -- from our
18 brand to their brand before that --

19 THE COURT: All right.

20 THE WITNESS: -- because they knew that we were
21 leaving them, and about six months before, they started to
22 switch to their brand.

23 Also, they were making product with our label on
24 it, they were using our label. And they were selling that,
25 of which Dalmatia got -- did not receive any income on that

1 because it was going right to them. When the injunction was
2 filed, they had to stop selling our label, and then they
3 switched to Divina.

4 BY MR. KIZNER:

5 Q What's vina [sic]? Can you explain that?

6 A Excuse me?

7 Q Can you explain what vina is?

8 A Divina is the brand that FOODMatch came out with.
9 FOODMatch also is a distributor of olives, and it's a brand
10 that they've had for a long time, so it's not a new brand,
11 but it's new to fig spread.

12 Q So, after the injunction was entered, this vina brand
13 started making food spread -- fig spread? Sorry.

14 MR. GEORGE: Objection, Your Honor. He's leading
15 the witness.

16 THE COURT: Well, I think he's just trying to lay
17 the foundation here. I'll allow that question.

18 THE WITNESS: When Divina stopped selling our
19 product with our name, they switched -- when FOODMatch,
20 rather, they switched to Divina brand, using our formula,
21 basically, in a different jar.

22 BY MR. KIZNER:

23 Q And during the 2017/2018 holiday season, a year ago, I
24 mean, how was -- how was the production for Dalmatia doing at
25 that point?

1 A Our sales were so -- so down that we actually had to let
2 people go in the plant in Croatia because we had no sales
3 because, for those couple of months, we weren't selling
4 anything, which is really what tipped us off to the fact
5 there was something wrong, which led us to try to find out
6 what was going on.

7 THE COURT: I'm sorry. What --

8 A And then we found out.

9 THE COURT: What period of time are you talking
10 about now?

11 THE WITNESS: Yes.

12 THE COURT: What period of time are you talking
13 about, in this last --

14 THE WITNESS: It would have been the end of 2016
15 into 2017, I believe.

16 BY MR. KIZNER:

17 Q And how did you -- what gave rise to the lawsuit --

18 A What gave --

19 Q -- the underlying --

20 A -- rise to --

21 Q -- lawsuit?

22 A -- the lawsuit?

23 Q Yeah.

24 A Well, we found out that they were counterfeiting our
25 product and --

1 THE COURT: Do we really --

2 A -- honestly --

3 THE COURT: -- have to go into --

4 MR. GEORGE: Your Honor --

5 THE COURT: I stopped --

6 MR. GEORGE: And he's the head --

7 THE COURT: I stopped --

8 MR. GEORGE: -- of sales.

9 THE COURT: I stopped the debtor from going to the
10 beginning of the litigation, and I'm going to stop you, as
11 well, on rebuttal.

12 MR. KIZNER: Okay.

13 THE COURT: Let's not do that.

14 BY MR. KIZNER:

15 Q Mr. Thompson testified earlier about how fig spread was
16 around since like 100 A.D. Do you recall that testimony?

17 A Yes.

18 Q Okay. How long has -- how long was the debtors actually
19 producing fig spread, though?

20 A How long was?

21 Q Were they actually producing it.

22 A I really don't know that answer.

23 Q Oh, okay.

24 (Participants confer)

25 Q Did --

1 A I mean, he's correct to say that fig spread has been
2 around forever, a long time. I'm not saying that isn't true.
3 But nobody ever really did anything to market fig spread in
4 this market until Dalmatia came along and really started to
5 develop a marketing program, develop sales programs. So they
6 created a market that never existed. That's not to say that
7 fig spread wasn't around; it was. But there was no market
8 for fig spread until Dalmatia got into it.

9 Q And since the debtors were introduced to Dalmatia and
10 the fig spread, the whole business model of fig spread, even
11 after the lawsuit, they still have their own fig spread,
12 right?

13 A I can't hear you.

14 Q They have their own fig spread --

15 A They have Divina --

16 Q -- the debtors.

17 A -- correct.

18 Q Okay.

19 (Participants confer)

20 Q Do you know how they, all of a sudden, started creating
21 the fig spread --

22 A No, I didn't.

23 Q -- the debtors?

24 Do you believe that they used Dalmatia's recipe?

25 MR. GEORGE: Objection, Your Honor.

1 THE COURT: Sustained.

2 MR. GEORGE: Leading.

3 THE COURT: Sustained.

4 (Participants confer)

5 THE WITNESS: I -- I --

6 THE COURT: You can't answer the question.

7 THE WITNESS: I can't answer the question.

8 THE COURT: I sustained the objection.

9 THE WITNESS: Anyway ...

10 THE COURT: Please don't answer.

11 MR. KIZNER: That's all, Your Honor.

12 THE COURT: Okay.

13 MR. GEORGE: Just a couple, Judge.

14 CROSS-EXAMINATION

15 BY MR. GEORGE:

16 Q You said -- what is your position at the company?

17 A I'm the Director of Sales.

18 Q And are you employed by Dalmatia or some other company?

19 A Dalmatia.

20 Q And who do you answer to at the company?

21 A To Maia Magee and to Neb, but mostly to Maia.

22 Q Now you said someone was using a formula in a different
23 jar. Who were you talking about?

24 A I was talking about FOODMatch was using Dalmatia's
25 formula, selling it in the jar with the Dalmatia label on it.

1 Q Okay.

2 A The only difference was that it said "Product of USA,"
3 instead of product of Croatia.

4 Q Were you in -- personally involved in any of the testing
5 of the formula that was used --

6 A No.

7 Q -- in those jars?

8 A No.

9 Q Have you ever seen any reports from anybody about that -
10 - what was in those jars --

11 A No.

12 Q -- used?

13 A No.

14 Q Okay. You don't have any information on what happened
15 between October '17 and October of '18 with respect to the
16 Nielsen sales, right?

17 A The -- I do not.

18 Q Okay.

19 A But the only one that I have for that particular year is
20 December.

21 Q Up to the end of '17.

22 A Correct. So I don't know --

23 Q Okay.

24 A -- what October was. It is possible that, maybe in
25 October, you know, it could have been up. But like I said --

1 Q Well, but it's also --

2 A -- it's the year end that matters.

3 Q But it's also possible that, through the whole year, it
4 was down because you don't know what the number was.

5 A No, but I can get it.

6 MR. GEORGE: Okay. I don't have anything further,
7 Your Honor.

8 THE WITNESS: Okay.

9 MR. MASCHMEYER: Your Honor, I have one question.

10 CROSS-EXAMINATION

11 BY MR. MASCHMEYER:

12 Q Mr. Grossman.

13 A Yes.

14 Q Grossman, correct?

15 A Yes.

16 Q When did you start working for them?

17 A December of 2017.

18 MS. MAGEE: No, no.

19 THE WITNESS: Yeah.

20 THE COURT: That would be a year ago.

21 THE WITNESS: Yes.

22 THE COURT: Yeah.

23 THE WITNESS: But you know, Nielsen is a very --
24 readily available. When I took over, the first thing I did -

1 THE COURT: No, that wasn't --

2 THE WITNESS: -- was look at --

3 THE COURT: That wasn't the --

4 THE WITNESS: -- the data.

5 THE COURT: -- question he asked you. It was how
6 long ago --

7 MR. MASCHMEYER: No, I asked --

8 THE COURT: Maybe you didn't --

9 MR. MASCHMEYER: -- when he was --

10 THE COURT: -- hear the question.

11 MR. MASCHMEYER: -- when did he get --

12 THE COURT: How long ago did you start working for
13 Dalmatia?

14 THE WITNESS: 2017, December.

15 THE COURT: December. One year.

16 THE WITNESS: One year.

17 THE COURT: You've been with the company one year.

18 THE WITNESS: Correct.

19 THE COURT: Okay.

20 BY MR. MASCHMEYER:

21 Q Yeah. Next, were you at the settle -- any of these
22 settlement conferences?

23 A No.

24 MR. MASCHMEYER: I have no further questions.

25 THE COURT: Okay. I don't have any questions.

1 Redirect?

2 (Participants confer)

3 MR. KIZNER: Your Honor, I have no -- Ms. Magee has
4 one question I'd like to ask her on the stand, if we could
5 bring her up as a second rebuttal witness.

6 THE COURT: So you don't have any questions for --

7 MR. KIZNER: No, no more --

8 THE COURT: -- this witness.

9 MR. KIZNER: -- questions for --

10 THE COURT: All right.

11 MR. KIZNER: -- Mr. Grossman.

12 THE COURT: Thank you, Mr. Grossman. You can step
13 down.

14 (Witness excused)

15 THE COURT: You want to call Ms. Magee?

16 MR. KIZNER: Ms. Magee back up as a rebuttal --

17 THE COURT: Yeah.

18 MR. KIZNER: -- as a rebuttal witness.

19 THE COURT: She can come back up as a rebuttal
20 witness.

21 MAIA MAGEE, WITNESS FOR THE MOVANT, PREVIOUSLY SWORN, RESUMES
22 STAND

23 DIRECT EXAMINATION

24 BY MR. KIZNER:

25 Q Ms. Magee, I just have one question. What did you prove

1 in court at the Eastern District trial; what was proved?

2 A In the Federal Court in Easton, Pennsylvania, in a four-
3 week trial, I proved that Lancaster and FOODMatch stole our
4 recipe. I proved that they counterfeited our product,
5 meaning they made lookalike jars, to look like mine. And I
6 proved they illegally used my trademarks.

7 MR. KIZNER: That's the only question I have, Your
8 Honor.

CROSS-EXAMINATION

10 BY MR. GEORGE:

11 Q And ma'am, isn't it true that both your verdict and the
12 debtor both sought new trials of both of those verdicts? You
13 sought a new trial, and so did the debtor, right?

14 A I don't think the debtor sought a new trial on --

15 Q Okay.

16 A -- stealing the recipe.

17 Q You sought a new trial.

18 A Not on those issues.

19 Q Okay.

20 A We won.

21 MR. GEORGE: Okay.

22 THE COURT: Mr. Maschmeyer, anything?

23 MR. MASCHMEYER: I have nothing, Judge.

24 THE COURT: Okay. All right. Thank you.

25 THE WITNESS: Thank you.

1 (Witness excused)

2 THE COURT: All right. So I take it, with that,
3 Dalmatia rests.

4 MR. KIZNER: Yes, Your Honor.

5 THE COURT: Okay. So the record is -- the
6 evidentiary record is complete.

7 MR. MASCHMEYER: Yes, Judge.

8 THE COURT: All right. Before we discuss,
9 procedurally, where we go from here, I would like to see
10 counsel in chambers.

11 (Participants confer)

12 (Recess taken at 2:24 p.m.)

13 (Proceedings resume at 2:52 p.m.)

14 (Call to order of the Court)

15 THE COURT: Okay. Both for the sale of the record,
16 and truly for the benefit of the principals of Dalmatia and
17 the debtors, I want to summarize what we talked about in
18 chambers off the record.

19 Essentially, what I did for the lawyers -- and I'm
20 sure the parties' lawyers will give you their versions of
21 this, as well. But essentially what I did is I shared some
22 impressions about the case, the hearing that I've heard
23 today. And the main theme that I expressed is that there are
24 difficult issues in the case that I have to resolve, in order
25 to decide who wins and who loses, and there are difficult

1 issues legally.

2 You know, the bankruptcy process, particularly in
3 Chapter 11, is a very technical process, it's very concerned
4 about the procedures that are used. And some of the
5 standards for deciding the propriety of plan provisions are
6 fairly general, where courts have applied them in many
7 different ways, leaving me without any specific rules that I
8 have to follow or cases that tell me exactly what I need to
9 do in certain situations.

10 The point here is that I expressed that I don't
11 know how I'm ruling on this case. It will require me to
12 study the record and resolve a number of thorny bankruptcy
13 issues that have been discussed in some cases, but nothing
14 that I think is going to give me any clear guidance. And as
15 a result, it's a crap shoot, from the perspective of the
16 parties.

17 It's also a case where it's all or nothing, at
18 least as I see it now. It's not the kind of case that comes
19 to a court, where parties win partially or not partially.
20 The nature of this dispute is, either I'm going to say the
21 plan is fine, in which case Dalmatia gets treated with the
22 ten percent distribution; or the plan isn't fine, in which
23 case Dalmatia has to be treated by the Class 8 and Class 9
24 creditors, and they get a lot -- and Dalmatia gets a lot more
25 money. There's nothing in between here.

1 And that's a kind of classic situation. It's
2 almost a red flag for a judge to stop for a second and tell
3 the parties to at least consider settlement and to consider
4 controlling your own destiny about this, cutting off at least
5 some of the bleeding, in terms of paying legal expenses, and
6 determining if there's some kind of a compromise that you can
7 live with that will give you some finality to this.

8 In terms of the time process, given what you'll see
9 in a moment, the need for obtaining a transcript and briefing
10 the issue, and then giving me sufficient time to resolve it,
11 the best you're looking at, probably, from past experience,
12 is a decision in the summer. And so this will be hanging
13 over your heads for another six months.

14 It could be longer, sometimes I take longer writing
15 opinions, and particularly when they're difficult. And I see
16 this, at the outset, as being one of those difficult cases,
17 where I'm treading in legal areas that bankruptcy
18 practitioners are very sensitive about, when judges write.
19 And so I will be very careful about what I say on some of
20 these issues.

21 So that's what I told counsel, and I just simply
22 asked them to reach out to their clients and determine if the
23 parties are willing to engage in some settlement discussions
24 on the finite issue -- because it's only a fixed amount of
25 money here that's in dispute.

1 So the process will be this. I'm going to give
2 everybody a couple -- some time to do this. I'd say, by the
3 end of next week, I'd like to have the -- somebody -- one or
4 more of the parties report back to my courtroom deputy that,
5 essentially, you're on board with having some time to settle,
6 and that will slow down the rest of the scheduling process
7 for deciding this case. And assuming that happens, I want to
8 lay out for everyone what the deadlines will be.

9 If you're willing to engage in a -- one more round
10 of trying to settle it, I'm willing to wait -- let's see.
11 Where's the calendar? I'll give you the whole month of
12 January, to see if you can settle it. If you haven't -- and
13 let me make one other comment about the settlement process.
14 Unlike Judge Smith, I am reluctant to really roll up my
15 sleeves and be involved in the settlement negotiations, since
16 I have to decide this. But as long as I can protect my
17 ability to decide the case, if you -- if the parties get to
18 the point where they're really awfully close, and they just
19 might need a little help from me, I'll be willing to
20 participate at that point.

21 So, giving you the whole month of January,
22 essentially what I'm saying is that, if there's no
23 settlement, I want the transcript ordered by February 1st,
24 2019. Assuming that there's roughly -- you can order it on
25 the least inexpensive fashion, which is a thirty-day

1 turnaround, usually it comes in a little faster than that.

2 And as a reminder to all of us, if we get to that point that
3 you're ordering the transcript, we do -- we'll have to redact
4 that one little portion of it.

5 Essentially, I -- it won't be firm dates, but
6 whenever the transcript hits the docket, I'll give each side
7 -- I'm actually going to ask for simultaneous briefs. I'll
8 give each side four weeks to file an initial brief, and I'll
9 give two weeks for a reply. And I'll give two weeks for a
10 reply. So, realistically, you'll get the transcript in late
11 February, the briefs will be late March, the briefing will be
12 completed in April at -- on this kind of a schedule.

13 If I don't get the confirmation next week, through
14 my courtroom deputy, that there is -- the parties are at
15 least intending to have a serious and meaningful settlement
16 process or effort to try to settle it, I'll just move up the
17 dates, proportionally at that point.

18 So that's how I see it, and that's how I see where
19 we are. In light of that, as I told counsel in chambers,
20 there's really no need for a closing argument. A case that
21 has any degree of length and complication, I tend to find
22 that getting post-trial briefs obviates the need for a
23 closing argument. There is a potential that, once I have the
24 briefs, I might want oral argument, but that's rare, it
25 doesn't happen very often, once I have briefs after a trial.

1 So anything by way of logistics that I need to
2 cover that I haven't talked about?

3 (No verbal response)

4 THE COURT: Okay. So let me thank you all. I
5 appreciate -- while, at times, the hearing was a little
6 testy, overall, I appreciate the hard work that went into it
7 and the relative efficiency of the hearing. I'm sure we're
8 all glad it's done. And with that, I'll conclude the hearing
9 and wish everybody a good -- have a good weekend and a good
10 holiday.

11 PARTICIPANTS: Thank you, Judge. Thank you, Your
12 Honor.

13 THE COURT: Court is adjourned.

14 (Proceedings concluded at 3:00 p.m.)

15 *****

1 CERTIFICATION

2 I certify that the foregoing is a correct
3 transcript from the electronic sound recording of the
4 proceedings in the above-entitled matter to the best of our
5 knowledge and ability.

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9



10 _____ March 6, 2019

11 Coleen Rand, AAERT Cert. No. 341

12 Certified Court Transcriptionist

13 For Reliable